State of California Regional Water Quality Control Board Santa Ana Region

March 3, 2006

ITEM:

14

SUBJECT:

Amended Cleanup and Abatement Order No. R8-2005-0053 for Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc., and Black & Decker (U.S.), Inc. – Attorneys for the named dischargers will ask the Board to adopt a procedure applicable to all suspected dischargers for the completion of the necessary remedial investigation, feasibility study, and remedy selection for perchlorate impacts to the

Rialto/Colton Groundwater Basin.

The attached materials were submitted by the named dischargers in support of their request. Staff will submit a response to this proposal separately.

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BEFORE THE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SANTA ANA REGION

EXECUTIVE OFFICER, GERALD J. THIBEAULT,

VS.

KWIKSET LOCKS INC., EMHART INDUSTRIES, INC., KWIKSET CORPORATION, BLACK & DECKER INC., AND BLACK & DECKER (U.S.), INC..

Amended Order No. R8-2005-0053

Issued Pursuant to Water Code Sections 13267 and 13304

REQUEST THAT BOARD ADOPT PROCEDURE
APPLICABLE TO ALL SUSPECTED DISCHARGERS
FOR THE COMPLETION OF NECESSARY REMEDIAL INVESTIGATION,
FEASIBILITY STUDY, AND REMEDY SELECTION FOR PERCHLORATE
AND VOC IMPACTS TO THE RIALTO/COLTON GROUNDWATER BASIN
AND
RESCIND AMENDED CAO R8-2005-0053

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I. Introduction

On May 16, 2003, the Santa Ana Regional Board Water Quality Control Board ("Regional Board" or "Board") adopted Resolution No. R8-2003-0070. That resolution reaffirmed the Board's decision on September 13, 2002, to rescind the CAO its Executive Officer had issued to Goodrich Corporation ("Goodrich") and Kwikset Corporation. That CAO had directed these two entities alone to investigate, study, develop, and implement the final remedial action plan necessary to cleanup all perchlorate and VOC contamination then recently discovered in the Rialto/Colton Groundwater Basin ("Basin"). In its resolution, the Board found that it was unreasonable to focus on just two suspected parties, given the evidence implicating many others.

It is not reasonable to focus on two parties where there is evidence that many others might be the cause or have contributed to the contamination and bear some responsibility.

(Ex. A, Board Res. No. R8-2003-0070, Finding 24, at 4.) Since this Board resolution, Board staff have successfully negotiated a number of voluntary agreements with suspected dischargers for the remedial investigation of the soil and groundwater, a necessary prerequisite to undertaking any feasibility study and final remedial action plan.

Unfortunately, in the Fall of 2005, staff's voluntary negotiation process with regard to suspected discharger Emhart Industries Inc ("Emhart") was sidetracked and Emhart was falsely labeled a recalcitrant by one of its adversaries in the pending federal litigation. Somehow the notion took hold that Emhart's liability alone should now be determined by this Board, while the federal district court would continue to adjudicate the liability of all other suspected dischargers.

Thus, by this request, Emhart seeks to accomplish three things: (1) the restoration of balance and fairness in this Board's and staff's enforcement of the laws within its jurisdiction; and (2) the adoption of a comprehensive and inclusive procedure which will allow the Board, its staff, the community, and all suspected dischargers to move forward together in developing the technical information necessary to select and implement the final remedial action for the Basin; and (3) at the same time, allow the determination of liability and allocation of responsibility among all suspected dischargers to proceed in our court system where such determinations are best made in factually and legally complex cases.

II. The Requested Action

Specifically, Emhart, Kwikset Locks Inc., Emhart Industries, Inc., Kwikset Corporation, and Black & Decker (U.S.), Inc. (the "Requesting Parties") ask this Board to take the following action with regard to its ongoing investigation of the impact of perchlorate and VOCs in the Basin:

- 1. Direct its Executive Officer to contact all suspected dischargers, including all defendants named by the City of Rialto and the City of Colton in their pending federal cost recovery actions, and request that they voluntarily undertake forthwith to form the Rialto/Colton Groundwater Basin Steering Committee (the "RCGB Steering Committee").
- 2. The purpose of the RCGB Steering Committee shall be: (i) to jointly identify and undertake, to the satisfaction of the Executive Officer, all additional necessary remedial investigation (RI) work regarding the discharge of perchlorate and VOCs in the Basin beyond that now being voluntarily undertaken by some, but not all, of the suspected dischargers; and (ii) upon the completion of the RI, to jointly prepare, to the satisfaction of the Executive Officer, a feasibility study (FS) and final remedial action plan (RAP) to cleanup and/or abate the effects of perchlorate and VOCs in the Basin.
- 3. Upon completion of this work, the Executive Officer shall assess the data, and, with the aid of the liability determinations made by the federal district court, prepare a recommendation for the Board's consideration regarding which suspected dischargers will be asked to undertake to implement the final Remedial Action Plan.
- 4. Direct its Executive Officer to report to the Board, along with a recommended course of action, any suspected discharger which declines to participate in the RCGB Steering Committee along with an appropriate staff recommendation designed to encourage participation by all suspected dischargers until such time that their non-liability has been determined or they have settled their alleged liability with all interested parties.
- 5. As a matter of policy and conservation of staff resources, the Board should at this time make clear to all suspected dischargers that it will leave the determination of their liability and allocation of responsibility to the pending federal court actions so long as significant progress is being made on the RI/FS work, and ultimate implementation of the selected final RAP.
- 6. The one exception to this measured approach would be the need to take an immediate interim remedial measure to address the discovery of additional drinking water well impacts.
- 7. Finally, to implement the above actions with regard to the Requesting Parties, the Board shall (i) accept Emhart's and Pyro Spectacular's Joint Remedial Action Work Plan as conceptually approved by its Assistant Executive Officer, and (ii) rescind Amended CAO R8-2005-0053, thereby leaving in place the original CAO R8-2005-0053 issued on February 28, 2005.

The benefits to this proposal are clear. Board staff resources can be directed to accelerated investigation and remediation. The suspected dischargers can devote their

resources to performing work. And, the complex factual and legal issues can be resolved in federal district court.

III. The Current Status of Remedial Work In the Rialto/Colton Groundwater Basin

A. The Interim Remedial Measures

Interim remedial measures, which include well-head treatment, blending, and use of alternative water sources, necessary to ensure safe drinking water, are in place in all areas of the Rialto/Colton Groundwater Basin where perchlorate and VOCs have been detected.

Thus, the water provided to the public is safe to drink.

B. The Work That Remains

What remains to be done in the Rialto/Colton Groundwater Basin is: (1) completion of site specific remedial investigations (RI) to identify existing sources of perchlorate and/or VOCs in the soil and to define the vertical and lateral extent of such chemicals in the groundwater throughout the Basin; (2) preparation of a feasibility study (FS) which will identify and evaluate remedial action alternatives and recommend a final remedial action plan (RAP) for perchlorate and VOCs in the soil and groundwater; and (3) implementation of the final site specific and basin-wide RAP.

1. Status of Remedial Investigations

Over the past several years, Regional Board staff have identified three potential significant sources of perchlorate and VOCs in the Rialto/Colton Groundwater Basin: (1) the County of San Bernardino Landfill known as the Mid-Valley Sanitary Landfill ("County Landfill Site");¹ (2) the property located at 2298 Stonehurst Ave., in Rialto (the "Stonehurst Site");² and (3) a 160 acre site in Rialto where munitions and pyrotechnics historically were manufactured and stored, and pyrotechnics are currently manufactured and stored (the "160 Acre Site").³ Others may not yet be identified.

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The Mid-Valley Sanitary Landfill is a 487-acre Class III municipal solid waste management facility owned and operated by the County since its establishment in 1958. Robertson's Ready Mix has operated unlined wash ponds on land owned by the County which is now part of the County's Landfill.

The Stonehurst Site was the site of operations by Amex/Tasker (Whittaker is the alleged successor), Atlas Fireworks, Trojan Fireworks, and, Pyro Spectaculars Inc.

The 160 Acre Site historically was initially used as a munitions storage depot by the U.S. Military during World War II, and in later years was used for munitions manufacturing operations by West Coast Loading Corporation (Emhart is the alleged successor) (1952-1957), rocket and missile research and manufacturing by Goodrich

With regard to the County Landfill and the Stonehurst Sites, Board staff has obtained agreements from suspected discharger County of San Bernardino ("County") and a cooperative group of other parties to investigate and characterize the soil and groundwater at these respective sites.

With regard to the 160 Acre Site, after over six months of negotiations, on November 16, 2005, Goodrich committed to the Board to install up to nine (9) groundwater monitoring wells substantially down gradient of the 160 Acre Site to investigate the lateral and vertical extent of perchlorate and VOCs. Goodrich's well installation, development, data collection, and reporting work is estimated to take approximately ten (10) months. As the result of recent negotiations, on February 14, 2006, Board staff reached a voluntary agreement with Emhart Industries Inc. ("Emhart") and Pyro Spectaculars Inc. ("PSI") for a comprehensive soil and groundwater investigation of the 160 Acre Site, which will include over 106 soil gas samples in 53 separate locations, 432 soil samples in 53 locations, and the installation of a minimum of five (5) deep groundwater monitoring wells.⁴ This work is scheduled to commence on February 22, 2006.

In short, Board staff now have obtained the voluntary agreement of Goodrich, Emhart, and PSI to perform all of the investigative work identified in the first three paragraphs of Amended CAO R8-2005-0053 issued to the Requesting Parties with regard to the 160 Acre Site. Upon the completion of this work, staff and the technical consultants retained by various suspected dischargers should be in a position to determine whether additional soil and groundwater investigation is warranted. It is anticipated that this remedial investigation work and the preparation of all necessary reports should be completed by the end of 2006.

2. The Feasibility Study

After the Rialto/Colton Groundwater Basin is investigated to the satisfaction of Board staff, it will be necessary to prepare a feasibility study (FS) which will: (1) evaluate each identified source of perchlorate and VOCs in the soil and the lateral and vertical extent of such chemicals in the groundwater; (2) identify potential remedial action alternatives; and (3) select the final remedial action plan (RAP).

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^{(1958-1963),} and pyrotechnics manufacture and storage through the present day.

Critically, these five additional groundwater monitoring wells will directly investigate potential active sources of perchlorate and VOCs within the 160 Acre Site, which include the Goodrich Burn Pits, the McLaughlin Pit, and various historical production areas where both Goodrich and West Coast Loading Corporation are asserted to have used these chemicals. In January 2006, the groundwater well down-gradient of the Goodrich Burn Pits was reported to contain 3,500 ppb of perchlorate; which is the highest detected concentration of perchlorate to date in the Basin.

Depending on when all necessary remedial investigation work is completed, it is anticipated that a final acceptable Feasibility Study could be completed by the end of 2007. At this juncture, no suspected dischargers have been enlisted to prepare the necessary basin-wide Feasibility Study.

3. The Remedial Action Plan

The final Remedial Action Plan has not yet been developed.

IV. Status of Suspected Discharger Liability Determinations

In January 2004, the City of Rialto sued 45 suspected dischargers in federal district court in Riverside. In February 2005, the City of Colton sued many of the same defendants in federal district court in Los Angeles. It is anticipated that the district court's liability determinations will take place before the end of 2007 unless the cases settle.

V. Clarification of Misrepresentations Made to the Board on January 18, 2006

On January 18, 2006, during the public comment period, three commenters asserted without any factual basis or presentation that the Board should proceed with the adjudication of Emhart's liability in July 2006 because Emhart allegedly had been recalcitrant before this Board. The facts are to the contrary.

A. CAO R8-2005-0053 — Issued To Emhart in February 2005

On February 28, 2005, the Board's Executive Officer issued CAO R8-2005-0053 to Emhart ("Emhart CAO). As the Executive Officer's transmittal letter of the same date makes clear, the Emhart CAO did not direct, ask, or require Emhart to do anything or assert that Emhart had been recalcitrant in anyway. Rather, the Emhart CAO was issued simply as a place holder to insure that the Board would not lose its potential future right to issue Emhart appropriate orders given the statute of limitations on such claims in light of Emhart's decision to dissolve and wind-up its corporate affairs in February 2002:

The Order is being issued at this time in order to preserve the Regional Board's claim against [Emhart], which filed for dissolution . . . on March 12, 2002. Under Connecticut statutes, in order to remain valid, a proceeding to enforce the claim must be initiated within three years of publication of the dissolution notice. That deadline is March 12, 2005. The issuance of this Order constitutes the commencement of the required action. . . .

Note that the Order does not include specific deadlines at this point; rather, the first deadline will be set by future action of the Board. A detailed hearing notice will be issued at a later date.

B. The Board Strikes A Deal With Goodrich

On November 1, 2005, after months of negotiations, Board staff publically announced Goodrich's proposed agreement to undertake a limited investigation of the groundwater down-gradient of the 160 Acre Site which would involve the installation of up to nine (9) groundwater monitoring wells ("Goodrich Agreement"). The text of the Goodrich Agreement, which was approved by the Board at its November 16, 2005 Board meeting, confirms the following essential elements: (1) Goodrich contests the Board's factual assertions that it discharged perchlorate at the 160 Acre Site; (2) Goodrich denies the Board's authority to order Goodrich to do anything; (3) Goodrich's liability will be determined in the pending federal cost recovery lawsuits filed by the City of Rialto and the City of Colton against Goodrich and others; (4) the Investigative Order issued to Goodrich will be rescinded; and (5) the Board will not issue any further orders to Goodrich during its performance of the specified work:

- S. Whereas, Goodrich denies and contests the Regional Board's assertions that Goodrich is a discharger under Water Code Section 13267 and 13304; that it is a responsible party under Section 107(a) of CERCLA; and that its operations resulted in an actual or threatened release of hazardous substances. . . .
- T. Whereas, Goodrich contests the Regional Board's authority, including but not limited to sufficiency of evidence, to issue an order requiring Goodrich to conduct additional remedial investigation or remediation concerning the 160-acre Site.
- U. Whereas, Goodrich has brought suit in the United States District Court... to pursue cost recovery and contribution against parties it believes are responsible for all or portions of the contamination in the Rialto Groundwater Management Zone....

NOW THEREFORE, ...

- 4. The Regional Board shall rescind the September 2002 Investigative Order [issued to Goodrich]...
- 9. During the implementation of the Order, the Regional Board shall not otherwise require Goodrich to conduct an investigation, remediation, or otherwise respond with respect to the contamination nor request any other agency, including

the U.S. Environmental Protection Agency, to so order it to do so.

(Ex. C, Goodrich Settlement Agreement, at 3-6.)

C. Emhart Is Offered A Similar "Temporary No-Action" Agreement

On November 1, 2005, some 15 days prior to the Board's approval of the Goodrich Agreement, the Board's Assistant Executive Officer invited Emhart in writing to negotiate a temporary no-further-action agreement similar to the Goodrich Agreement:

If Emhart and Black & Decker are interested in conducting additional groundwater investigations comparable to and complementary of the proposed Goodrich investigation, we would be interested in exploring an interim settlement agreement along the lines of the proposed Goodrich Agreement. Please advise us by November 17, 2005, if you have an interest in discussing such an agreement.

(Ex. D, Berchtold Letter, dated 11/1/05, at 2.) Emhart immediately confirmed orally its interest in such an agreement. On November 15, 2005, some 14 days later, Emhart confirmed in writing its interest in negotiating a similar agreement and presented staff with an initial written investigative proposal for consideration. (Ex. E, Wyatt Letter, dated 11/15/05.) As this Board knows, good faith negotiations between staff and Emhart followed and were almost completed when the Board held its January 18, 2006 meeting.

On February 14, 2006, Emhart, PSI, and the Assistant Executive Officer finalized in principle their agreement on the proposed comprehensive soil and groundwater investigation of the 160 Acre Site.

D. Other Related Historical Board Actions in the Rialto/Colton Basin

1. Kwikset Corporation

On June 6, 2002, the Board Executive Officer issued CAO R8-2002-0051 to Kwikset Corporation and Goodrich Corporation. Both parties requested an evidentiary hearing. On September 13, 2002, after a one day hearing, the Board rescinded CAO R8-2002-0051. On May 16, 2003, the Regional Board adopted Resolution No. R8-2003-0070 which reaffirmed that the CAO R8-2002-0051 had been rescinded because Board staff had not presented sufficient evidence to support its allegations that: (1) West Coast Loading Corporation discharged perchlorate at the 160 Acre Site; or (2) the Kwikset Corporation was the corporate successor of WCLC and thus liable for the alleged acts of WCLC. (Ex. A, Findings 21, 22, at 3.) It is in this Resolution that the Board expressly found that it was unreasonable to focus on just two parties, given the evidence implicating many others. (Ex. A, Finding 24, at 4.)

No further action was taken by the Board or staff with regard to Kwikset Corporation until December 2, 2005, when Kwikset Corporation was named in the Amended Emhart CAO.

2. Emhart

On October 23, 2002, the Board's Executive Officer issued Water Code section 13267 investigative order to Emhart ("Emhart Investigative Order"). Eighteen other parties received such orders with a much more limited scope of work than that demanded of Emhart. Accordingly, Emhart challenged the validity of its order in court. On November 8, 2004, the Riverside County Superior Court found that the Emhart Investigative Order was unconstitutional and thus directed the Board to rescind it. (Ex. F, 11/08/04 Court Decision.) On July 5, 2005, the Board rescinded its Emhart Investigative Order. (Ex. G.)

On October 17, 2005, the Board issued a notice of hearing on the Emhart CAO first issued on February 28, 2005. As noted above, on November 1, 2005, Board staff offered to negotiate with Emhart a similar compromise to that offered to Goodrich. On November 16, 2005, Emhart responded to staff's offer with a comprehensive remedial investigation proposal and negotiations commenced.

On December 2, 2005, Board staff amended the Emhart 2005 CAO, which for the first time set forth specific detailed work tasks, albeit without deadlines. On February 14, 2006, the Assistant Executive Officer reached conceptual agreement on the scope of Emhart's and PSI's Remedial Investigation Work Plan, which will complete the remedial investigation of the 160 Acre Site and thus resolve the first three work items listed in the Amended Emhart CAO.

3. Black & Decker (U.S.) Inc., Black & Decker Inc., and Kwikset Locks Inc.

Black & Decker (U.S.) Inc. is in the tool manufacturing business. It has never owned Emhart, which was a subsidiary of a sister corporation, Black & Decker Inc. until Emhart's dissolution in 2002. Black & Decker (U.S.) Inc. was named as a suspected discharger for the first time by Board staff on February 28, 2005, in the Emhart CAO and re-named on December 2, 2005 in the Amended Emhart CAO. It has never been asked to perform any work by Board staff.

Kwikset Locks Inc., which dissolved in 1958, and Black & Decker Inc., which owned all the stock of Emhart until its dissolution in 2002, were first named by the Board staff on December 2, 2005, in the Amended Emhart CAO. Neither entity has ever been asked to perform any work by Board staff.

VI. Conclusion

The recent voluntary work agreements of Goodrich, Emhart, and PSI, and the steering group process proposed herein will provide this Board, its staff, and the community with vital and necessary information regarding existing sources of perchlorate and VOCs in the soil and the lateral and vertical extent of those chemicals in a significant portion of the groundwater in Basin.

If the request set forth herein is implemented, the Board, its staff, and the community will also obtain the necessary feasibility study (FS) and a selected final remedial action plan (RAP), which is a necessary predicate to the cleanup of the Basin.

Further, if accepted, the Board and its staff will be able to devote their resources to the remaining technical issues and the suspected dischargers will be able to sort out their respective liabilities in our judicial system which is best suited and designed for such complex matters.

Accordingly, the Requesting Parties respectfully ask the Board to so direct its Executive Officer and staff.

Dated: February 16, 2006

Respectfully submitted

By: Meding James L. Meeder
Counsel for Requesting Parties

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BEFORE THE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SANTA ANA REGION

EXECUTIVE OFFICER, GERALD J THIBEAULT,

VS.

KWIKSET LOCKS INC., EMHART INDUSTRIES, INC., KWIKSET CORPORATION, BLACK & DECKER INC., AND BLACK & DECKER (U.S.), INC.

Amended Order No. R8-2005-0053

Issued Pursuant to Water Code Sections 13267 and 13304

EXHIBITS

REQUEST THAT BOARD ADOPT PROCEDURE APPLICABLE TO ALL SUSPECTED DISCHARGERS FOR THE COMPLETION OF THE NECESSARY REMEDIAL INVESTIGATION, FEASIBILITY STUDY, AND REMEDY SELECTION FOR PERCHLORATE AND VOC IMPACTS TO THE RIALTO/COLTON GROUNDWATER BASIN AND RESCIND AMENDED CAO R8-2005-0053

EXHIBIT A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SANTA ANA REGION

RESOLUTION No. R8-2003-0070

PETITIONS FILED BY GOODRICH CORPORATION

AND KWIKSET CORPORATION FOR REVIEW

OF CLEANUP AND ABATEMENT ORDER NO. R8-2002-0051

WHEREAS,

- 1. A hearing was held before the Board on September 13, 2002 to consider a request from Kwikset Corporation and Goodrich Corporation to rescind Cleanup and Abatement Order No. R8-2002-0051, issued by the Executive Officer on June 6, 2002. Following the presentation of evidence and testimony, the Board met in closed session to deliberate. It then delivered its decision orally, rescinding the Cleanup and Abatement Order as to both Kwikset Corporation and Goodrich Corporation and directing that orders pursuant to Water Code Section 13267 be issued to all potentially responsible parties suspected of having discharged perchlorate;
- 2. On advice of counsel, the Board Chair decided to bring the matter back to the Board at the October 25, 2002 Board meeting because of a defect in the notice of the September 13, 2002 meeting. That notice did not properly provide for a closed session. This matter was brought back to the Board on October 25, 2002;
- 3. In conformance with the public notice for the October 25, 2002 meeting, no further evidence or testimony was received from any party or interested person prior to deliberation by the Regional Board on October 25, 2002. Board Members Solorio and Withers did not take part as neither had fully participated in the September 13, 2002 session. The Board issued the same oral decision;
- 4. The Board received a request for a written decision from Kwikset Corporation's counsel, dated October 28, 2002, with findings that Kwikset is not the legal successor to West Coast Loading Corporation, and that West Coast Loading Corporation did not discharge perchlorate at its Rialto site. Board counsel prepared a written decision, summarizing in writing the Board's oral decision of October 25, 2002. The written decision was approved by the Board Chairperson and issued on November 19, 2002;

- 5. Kwikset filed a petition for review of the written decision with the State Water Resources Control Board. On March 13, 2003, the State Board issued a letter dismissing the petition because Kwikset is not an "aggrieved party," as required by Water Code Section 11320;
- 6. Thereafter, on April 10, 2003, Kwikset filed a Petition for Writ of Mandate in Riverside Superior Court requesting that the Court order the Regional Board to issue an order finding conclusively that Kwikset Corporation is not a legal successor to West Coast Loading Corporation and that there is no evidence that West Coast Loading Corporation discharged perchlorate;
- 7. The Petition for Writ of Mandate filed by Kwikset reflects fundamental misunderstandings regarding the Board's intentions, its findings and its authorities;
- 8. Pursuant to Water Code Section 13267 and 13304, the Regional Board is charged with overseeing investigations, cleanups and abatement actions of discharges to the waters of the state. Those provisions provide the Regional Board with continuing jurisdiction over investigations, cleanups and abatement actions;
- 9. The Regional Board is conducting an extensive investigation into the perchlorate groundwater contamination of public water supply wells in the Rialto-Colton area, which includes discharges suspected to be emanating from the location of facilities on property formerly operated by West Coast Loading Corporation, Goodrich Corporation, and others;

THE BOARD FINDS:

- 10. The Regional Board intends to continue its efforts to identify all potentially responsible parties concerning the perchlorate groundwater contamination in the Rialto-Colton area and to require that they conduct appropriate investigations, cleanups and abatement actions;
- 11. The Regional Board desires to make clear its intentions and findings in this matter, and has determined that it is appropriate to adopt this resolution in order to do so;
- 12. The Board is concerned about the time involved in solving the problem of perchlorate in the groundwater of the Rialto-Colton area and believes that pursuing enforcement

- of the cleanup and abatement order, as issued on June 6, 2002, would result in unnecessary delay as a result of administrative appeals and litigation;
- 13. The Board expects extensive legal delays would occur while communities are losing access to drinking water and has determined that addressing the problem as quickly as possible by cleaning up the contaminated wells or providing alternative water sources to be of greatest importance;
- 14. Kwikset Corporation disputes whether it is a legal successor in interest to West Coast Loading Corporation, alleged to be one of the original responsible parties;
- 15. Goodrich Corporation disputes that there is sufficient evidence to demonstrate that it discharged perchlorate and/or caused the contamination;
- 16. Goodrich Corporation has been and has reconfirmed that it is willing to cooperate with the Board to investigate whether it caused the contamination;
- 17. A non-adversarial approach is more likely to obtain some cooperation from those two companies;
- 18. There has not been adequate characterization of the plume, and further investigation is required;
- 19. Incentives should be identified to encourage timely participation by all potentially responsible parties;
- 20. The use of investigation orders under Water Code 13267 may bring to the table more potentially responsible parties;
- 21. The evidence presented at the September 13, 2002 hearing of culpability of Goodrich Corporation and West Coast Loading Corporation for discharges at their respective facilities in Rialto was inconclusive;
- 22. The evidence presented at the September 13, 2002 hearing of the corporate responsibility of Kwikset Corporation for the acts of West Coast Loading Corporation was inconclusive;
- 23. Many other potentially responsible parties suspected of having discharged perchlorate were mentioned in the briefings and during the presentations of September 13, 2002; it is important to broaden the investigation to bring in those other potentially responsible parties;

- 24. It is not reasonable to focus on two parties when there is evidence that many others might be the cause or have contributed to the contamination and bear some responsibility;
- 25. The practical approach requires broadening the investigation by issuing 13267 Orders to all suspected dischargers to conduct investigations;
- Sensitive land uses in the area make it very important that 26. timely action take place;
- 27. On October 25, 2002, the Board adopted a motion to rescind the cleanup and abatement order (No. R8-2002-0051) issued by the Executive Officer on June 6, 2002 and to direct the Executive Officer to issue Water Code 13267 letters to all potentially responsible parties. The Board further directed the Executive Officer to require those subject to the 13267 letters to submit their plans for addressing the issues involved in this investigation as quickly as possible; and
- The Board also asked Staff to use innovative approaches to 28. find funding for wellhead treatment and supplemental water sources and to be creative in approaching the potentially responsible parties to maximize their participation.

THEREFORE, BE IT RESOLVED THAT:

- Kwikset's request for a determination that Kwikset is not the legal successor to West Coast Loading Corporation, and that West Coast Loading Corporation did not discharge perchlorate at its Rialto site, has been denied without prejudice due to the pending nature of the investigation;
- Staff is directed to return to the Board with the results 2. of its investigation once it is concluded, so that the Board may determine what further action may be appropriate.
- I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on May 16, 2003.

Executive Officer

EXHIBIT B



California Regional Water Quality Control Board

Santa Ana Region



Alan C. Lloyd, Ph.D.

Agency Secretary

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Arnold Schwarzenegger Governor

February 28, 2005

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Ms. Linda H. Biagioni
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Vice President for Environmental Affairs, Black & Decker Corporation
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CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053

Dear Mr. Wyatt and Ms. Biagioni:

Enclosed is Cleanup and Abatement Order No. R8-2005-0053 issued to Emhart Industries, Inc. and Black & Decker (U.S.), Inc. The Order is issued under the Executive Officer's delegated authority and is in effect upon issuance. The Order is being issued at this time in order to preserve the Regional Board's claim against Emhart Industries, Inc., which filed for dissolution and caused notice to be published on March 12, 2002. Under Connecticut statutes, in order to remain valid, a proceeding to enforce the claim must be initiated within three years of publication of the dissolution notice. That deadline is March 12, 2005. The issuance of this Order constitutes the commencement of the required action.

In the event that Emhart and Black & Decker desire to be heard on the Order, a hearing before the Regional Board or a Hearing Panel composed of members of the Board is scheduled for August 18 and 19, 2005. Note that the Order does not include specific deadlines at this point; rather, the first deadline will be set by future action of the Board. A detailed hearing notice will be issued at a later date. The currently scheduled hearing commencement date is intended to allow the parties time to complete currently scheduled depositions of witnesses familiar with West Coast Loading Corporation activities and documents and time to notice and hold any further depositions that may be conducted relative to this proceeding. The hearing commencement date is subject to change.

California Environmental Protection Agency



If you have any questions regarding this matter, please contact Kurt Berchtold, Assistant Executive Officer, at (951) 782-3286 or Jorge Leon, Senior Staff Counsel, at (916) 341-5180.

Sincerely,

Gerard J. Thibeault Executive Officer

Enclosure: Cleanup and Abatement Order No. R8-2005-0053

cc (w/ enclosure):

Regional Board
Jorge Leon, SWRCB - OCC
Phil Wyels, SWRCB - OCC
Marilyn Levin, Deputy Attorney General
Gary Tavetian, Deputy Attorney General
Inland Empire Perchlorate Regulatory Task Force Members (mailing list attached)

California Regional Water Quality Control Board Santa Ana Region

Cleanup and Abatement Order No. R8-2005-0053

for Emhart Industries, Inc. and Black & Decker (U.S.), Inc.

Corporate Successors of the West Coast Loading Corporation

Formerly Located on the 160-Acre Property Bounded Approximately by Casa Grande Park Avenue on the North, Locust Avenue on the East, the Extension of Alder Avenue on the West, and the Extension of Summit Avenue on the South, City of Rialto, San Bernardino County

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

- 1. In February 1951, Kwikset Locks, Inc. (KLI), a manufacturer of household door locks, formed the West Coast Loading Corporation (WCLC).
- During 1951 and 1952, WCLC (as a subsidiary of KLI) constructed a
 manufacturing plant on 160 acres of property, consisting of the southwest
 quarter of Section 21, Township 1 North, Range 5 West, San Bernardino
 Base and Meridian in the City of Rialto, County of San Bernardino, State
 of California. From 1951 to 1957, WCLC (as a subsidiary of KLI) wholly
 owned and occupied this property.
- 3. During the period from 1952 to 1957, WCLC used the 160-acre property for the manufacture of explosive cartridges, photoflash cartridges, flares, ground burst simulators, and other incendiary devices. WCLC manufactured many of these products under subcontract to KLI for use by the military, under KLI's contract with the U.S. Government. WCLC also processed chemicals at the Rialto site for use by other government contractors in the manufacture of solid rocket propellant. WCLC also processed chemicals for the manufacture of flares and other products containing perchlorate for non-defense purposes.
- 4. From 1952 (or earlier) to 1957, various chemicals were delivered, stored, and used for WCLC's manufacturing activities at the 160-acre site. The

chemicals that were used, stored, and processed at WCLC during their occupancy of the site included ammonium perchlorate, potassium perchlorate, potassium chlorate, aluminum, iron oxide, and various compounds of nitrate, lead, and barium.

- WCLC's records indicate that very large amounts of perchlorate salts were handled at the facility. For example, a purchase order dated September 2, 1955, and delivery confirmations show that 47,000 pounds of potassium perchlorate were purchased from Western Electrochemical Co., Henderson, Nevada, and delivered to Rialto for use by WCLC.
- 6. As a further example, invoices and purchase orders, dated March 8, 1957. indicate that Grand Central Rocket Company received 43,250 pounds of ammonium perchlorate from WCLC after WCLC processed (i.e., dried) the ammonium perchlorate to a moisture content of 0.03% or less. The purchase orders state that Grand Central Rocket Company had supplied the material to WCLC. These business records for the work done under contract with Grand Central Rocket Company demonstrate that the handling, drying, and storage of very large amounts of perchlorate salts occurred at the WCLC site. The stringent requirements for low moisture are specific to the requirements for use of ammonium perchlorate as an oxidizer in the manufacture of solid propellant materials. Grand Central Rocket Company was in the business of manufacturing solid rocket propellant for use in military weapons systems during 1957, concurrent with the date of the purchase orders and the WCLC invoices for the 43,250 pounds of ammonium perchlorate.
- 7. WCLC's records included "standard operating procedures" (SOPs) for processing potassium perchlorate for use in WCLC products. WCLC's SOPs for the drying of potassium perchlorate state that potassium perchlorate powder was moved from barrels to uncovered trays, and then screened to remove lumps. The open trays were then moved to an oven in a different building using a hand-truck. Sacks were then filled with potassium perchlorate and stored indoors after drying was complete.
- 8. WCLC documents and testimony from former WCLC employees establish a multi-step process for the manufacture of photoflash cartridges, including drying, screening, a second round of drying, weighing, mixing, and loading. Each of these steps involved the handling, processing and/or movement of potassium perchlorate in order to mix photoflash powder. The drying, screening, weighing, mixing, and loading all took place in different rooms. WCLC documents further reveal that approximately 4%, by weight, of the perchlorate used to make photoflash cartridges was expected to be lost during the manufacturing process. WCLC documents

- show that WCLC used about 50,000 pounds of perchlorate for the manufacture of photoflash cartridges during the period from 1952 to 1957.
- 9. It is reasonable to conclude that some spillage would have occurred during the handling, drying, screening, weighing, mixing, loading, transporting, and storage of ammonium perchlorate and potassium perchlorate at WCLC. Also, given the very fine nature of the dried, screened perchlorate powder, it is reasonable to conclude that the process of transporting perchlorate from room to room and the physical movement of the perchlorate powder during the drying, screening, weighing, mixing, and loading processes would result in the mobilization of perchlorate powder into the air, and subsequent deposition onto floors, walls, ceilings, and other surfaces.
- 10. This conclusion is supported by numerous pages throughout the SOPs and the "standard non-operating procedures" for chemical handling at the WCLC facility, which include requirements for sweeping up spilled powder, wiping spillage with wet rags, and wet-mopping of spills and powder deposited on various surfaces during processing. These written procedures include specific instructions for cleaning up spills of chemicals from tabletops, floors and sink areas, and disposing of soiled rags, towels, filters and cups into "slop crocks" that were stored in the WCLC work rooms and magazines ("igloos" or "bunkers"). The site janitor's job included sweeping the buildings, burning of scrap and explosive materials, and disposal of trash and metal cans at WCLC's on-site dump.
- 11. It is reasonable to conclude that the extensive written procedures were developed because spillage and surface accumulation of chemical products, including perchlorate salts, was expected to occur, and routinely did occur, during processing of those products at the WCLC facility. Testimony and WCLC documents reveal that the spillage and/or accumulation of perchlorate salts on equipment, walls, floors, and ceilings led to at least one significant explosion. Testimony of former employees of WCLC that was provided during depositions that were conducted beginning in 2004, verifies that, in the buildings that were used by WCLC for weighing, screening, drying, mixing and loading perchlorate salts, the equipment, floors, walls, and ceilings were washed with rags and waterwet mops to remove chemical dust at least 4 times per shift, as specified in the SOPs.
- 12. Testimony of former WCLC employees also indicates that the mops used for cleaning the chemical residue were rinsed with water in buckets, and the contents of the buckets were dumped onto the bare ground outside of the buildings. Based on the use of perchlorate salts in these buildings, the

Order No. R8-2005-0053 Emhart Industries, Inc., and Black & Decker (U.S.), Inc.

water that was routinely dumped on the ground would have contained perchlorate. Further testimony from WCLC employees indicates that the metal trays that were used by WCLC employees for the screening and drying of perchlorate were taken outdoors to be cleaned. The residual perchlorate salts that remained on the trays were rinsed from the trays onto the bare ground, using a faucet and water hose.

- It is also reasonable to conclude, and former WCLC employees have 13. testified, that during the period from 1952 to 1957, WCLC stored and disposed of chemical-soiled rags, cans, and other wastes at the site, as directed by WCLC's written procedures. This conclusion is based upon WCLC's records and the testimony of former WCLC employees, as well as staff's collective knowledge and experience in the oversight of investigation and cleanup activities at numerous industrial sites throughout the Santa Ana Region where chemicals, including perchlorate salts, were used during the 1950s and 1960s. Standard industrial practices at such facilities in the 1950s and 1960s typically resulted in some spillage and on-site disposal of chemical products. Testimony from former WCLC employees indicates that WCLC operated an on-site laundry, used for the washing of the soiled rags. Since the 160-acre site was not sewered, any disposal of chemicals to sinks, drains, and floor drains would have entered on-site septic systems and gone to groundwater. The laundry drain apparently discharged directly onto the bare ground.
- 14. According to WCLC's "Safety Regulations for Handling Azides, Styphnates, and Similar Explosives," (dated January 3, 1954 and approved by WCLC's Executive Vice-President and General Manager, Gerald D. Linke), the used sponges and cleaning rags, cleaning water and other waste liquids generated from operations, including mixing photoflash powder containing perchlorate, were to be "taken to the disposal pit south of the plant site and drained into the ground."
- 15. In addition to the explosives and incendiary devices that were manufactured and the large amounts of perchlorate salts that were stored and handled at the site, WCLC owned "igloos" on adjacent land located southwest of the 160-acre property. WCLC leased space in the igloos to other parties, and also reserved space in the igloos for shared use by WCLC, expressly for the storage of explosives. Many explosives are known to contain perchlorate salts, so it is reasonable to conclude that perchlorate salts were stored in the igloos by WCLC.
- 16. The following findings explain the corporate history of WCLC, and specifically describe the direct successorship from WCLC to Emhart Industries, Inc., and Black & Decker (U.S.), Inc.:

- a. On July 1, 1957, American Hardware Corporation (AHC), a Connecticut corporation, acquired KLI and its subsidiaries, including WCLC. While numerous documents regarding corporate transfers and mergers involving these entities have been uncovered during the investigation of this matter, a June 1957 agreement between AHC and KLI has not been produced by Emhart Industries, Inc. That document may shed additional light on the precise nature of the acquisition of KLI by AHC. However, numerous other contemporaneous documents have been uncovered and assist in understanding the legal effect of the transaction.
- b. On July 3, 1957, WCLC was merged with KLI. According to a July 1, 1957 KLI Board of Directors resolution, quoted in KLI's Certificate of Ownership filed with the State of California, KLI assumed "all the liabilities and obligations" of WCLC, and "shall be liable therefor in the same manner as if it had itself incurred such liabilities and obligations." KLI remained under the control of AHC.
- c. On July 19, 1957, KLI sold the 160-acre Rialto property to B.F. Goodrich. KLI ceased its manufacturing activities in Rialto, but continued operating as a "division" of AHC, doing business in Anaheim, California, producing Kwikset's well-known product line of household door locks.
- d. On June 30, 1958, KLI was dissolved. AHC assumed the liabilities of KLI and WCLC, and continued producing the Kwikset product line at the former KLI Anaheim facility.
- e. IRS Form 7004, "Application for Automatic Extension of Time," was submitted to the IRS on behalf of KLI by C. K. Nelson, Assistant Treasurer, on September 15, 1958. This document contains KLI's stated reason for the requested extension: "The corporation was merged with another corporation as of June 30, 1958." (emphasis added).
- f. IRS Form 843, "Claim," dated November 28, 1961, was submitted on behalf of "KLI, Transferor" and "American Hardware Corporation, Transferor." In Schedule A, the following statement is contained in the second paragraph:

"Kwikset Locks, Incorporated was substantially a <u>wholly-owned</u> <u>subsidiary of American Hardware Corporation</u> as of January 1, 1958. On June 30, 1958, Kwikset Locks, Inc. was dissolved. All the

assets and liabilities were transferred to the parent corporation, and operations were continued as Kwikset Division of the American Hardware Corporation." (emphasis added).

- g. AHC merged with Emhart Manufacturing Company, a Delaware Corporation, in April 1964. The surviving corporation in the merger was AHC, under a new corporate name, "Emhart Corporation," as of June 30, 1964.
- h. Emhart Corporation became Emhart Industries, Inc., on May 4, 1976.
- i. Kwikset Corporation was incorporated in California in 1985 as a whollyowned subsidiary of Emhart Industries, Inc., and was capitalized using the net assets of the Kwikset Division of Emhart Industries, Inc.
- j. Emhart Industries, Inc., was acquired by Black & Decker (U.S.), Inc., a subsidiary of the Black & Decker Corporation, in 1989.
- k. Emhart Industries, Inc., is in the process of winding up its business and affairs, having filed a Certificate of Dissolution in the State of Connecticut in 2002.
- I. AHC's purchase of KLI was more than a mere stock purchase and assumption of known liabilities only, as Emhart has claimed. It constitutes a complete merger. The documents noted above in e. and f., contemporaneously prepared at or around the time of the 1957 AHC acquisition, demonstrate that KLI and AHC understood and believed the 1957 purchase of KLI to be a "merger," with the result that AHC assumed all of KLI's liabilities both known and unknown. In addition, a Kwikset Corporation publication, entitled "Kwikset A Black & Decker Company Employee Handbook," contains the following quotation:
 - "In 1957, Kwikset Locks, Inc. merged with the American Hardware Corporation of New Britain, Connecticut and subsequently became known as the Kwikset Division." Moreover, the Black & Decker website, as it appeared in 2002, indicated under "Company History" that KLI was merged into AHC. Notably, during the investigation of this matter in 2002, and shortly after this fact was pointed out to Kwikset's and Emhart's representatives, the website was changed to remove this statement.
- 16. Black & Decker (U.S.), Inc., by virtue of its status as parent corporation of Emhart and having received the stock of Emhart upon dissolution, is a legal successor to Emhart's and WCLC's liabilities under this order.

- 17. Emhart Industries, Inc., and Black & Decker (U.S.), Inc., are the corporate successors of WCLC and KLI, and are legally liable for discharges of pollutants caused by WCLC and KLI. WCLC and KLI, and their legal successors, have caused or permitted, or are causing or permitting, waste, i.e., perchlorate, to be discharged to waters of the state, and have created, or threaten to create, a condition of pollution or nuisance.
- 18. Perchlorate salts are highly soluble and dissociate in water to form perchlorate ions. There are currently no state or federal drinking water standards for perchlorate. However, the California Department of Health Sérvices (DHS) has established a drinking water Action Level (AL) for perchlorate of 6 parts per billion (ppb). An AL is a temporary safe drinking water-level that is based on limited studies that have been performed. Perchlorate is currently present in the Rialto, Riverside B, and Chino North Groundwater Management Zones. The West Valley Water District, the Fontana Water Company, and the Cities of Rialto and Colton had limited or ceased the use of 20 municipal water supply wells that exceeded the AL for perchlorate (several of these wells have been put back into operation after having perchlorate treatment systems installed).
- 19. Municipal water supply wells in the Rialto, Riverside B, and Chino North Groundwater Management Zones have been, or are likely to be, affected by the perchlorate pollution in these basins. Regional Board staff is currently attempting to identify all parties that may have discharged perchlorate in this area.
- 20. The beneficial uses of the Rialto, Riverside B, and Chino North Groundwater Management Zones include:
 - A. Municipal and domestic supply,
 - B. Agricultural supply,
 - C. Industrial service supply, and
 - D. Industrial process supply.
- 21. California Water Code Section 13304 allows the Regional Board to recover reasonable expenses from responsible parties for overseeing cleanup and abatement activities. It is the Regional Board's intent to recover such costs for regulatory oversight work conducted in accordance with this order.
- 22. This enforcement action is being taken by a regulatory agency to enforce a water quality law. Such action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section

- 21000, et seq.) in accordance with Section 15321, Article 19, Division 3, Title 14, California Code of Regulations.
- 23. A soil and groundwater investigation is necessary to define the vertical and lateral extent of the perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and from the former WCLC igloos (bunkers).
- 24. It is appropriate to order Emhart Industries, Inc., and Black & Decker (U.S.), Inc., to clean up and abate the effects of the discharge of perchlorate from property that was formerly owned and controlled by their corporate predecessors, WCLC and KLI.
- 25. The former 160-acre WCLC property now consists of numerous separate parcels, with multiple landowners. Since 1964, continuing through the present, various tenants involved in pyrotechnics have occupied portions of the site.
- Orders have been issued to former tenants or former owners of the 160-acre parcel and the adjacent property where WCLC's igloos (bunkers) were located. Additional orders may be issued, if Regional Board staff obtains additional information indicating that other specific tenants or owners have also discharged perchlorate that is present in the groundwater.

IT IS HEREBY ORDERED THAT, pursuant to Section 13304, Article 1, Chapter 5, Division 7, of the California Water Code, Emhart Industries, Inc., and Black & Decker (U.S.), Inc., shall cleanup and abate the effects of the discharges at the Rialto properties as follows:

- 1. Prepare and submit a work plan and time schedule to define the lateral and vertical extent of the perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and from the former WCLC igloos (bunkers). The work plan, subject to the approval of the Executive Officer, shall be implemented in accordance with a time schedule approved by the Executive Officer. The due date for this work plan and time schedule will be established by future action of the Regional Board.
- 2. Prepare and implement any additional work plans that the Executive Officer deems necessary to sufficiently characterize the lateral and vertical extent of perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and from the

former WCLC igloos (bunkers). The work plans, subject to the approval of the Executive Officer, shall be implemented in accordance with time schedules approved by the Executive Officer.

- 3. After the Executive Officer determines that the lateral and vertical extent of perchlorate that is discharging, has been discharged, or threatens to be discharged from the former WCLC facility and bunkers has been sufficiently defined, submit a detailed remedial action plan, including an implementation schedule, to cleanup or abate the effects of the perchlorate that is discharging, has been discharged, or threatens to be discharged, from the former WCLC facility and bunkers. The remedial action plan shall provide for replacement water service, which may include wellhead treatment, for any water supply wells determined by the Executive Officer, based on investigations conducted pursuant to Items 1 and 2, above, to be affected by the discharges. The remedial action plan and implementation schedule shall be submitted within 60 days of the Executive Officer's notification to Emhart Industries, Inc., and Black & Decker (U.S.), Inc., that the definition of the extent of perchlorate is sufficiently complete to initiate cleanup or abatement activities. The remedial action plan and schedule shall be subject to approval by the Executive Officer.
- 4. Implement the remedial action plan in 3., above, as approved by the Executive Officer.

This Order is issued under the Executive Officer's delegated authority to issue a Cleanup and Abatement Order.

Gerard J. Thibeault Executive Officer

February 28, 2005

Robert Thompson The Honorable Senator Nell Soto 822 N. Euclid Ave., Suite A Ontario, CA 91762

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EXHIBIT C

ADMINISTRATIVE SETTLEMENT AGREEMENT BETWEEN

THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION, AND GOODRICH CORPORATION

I. INTRODUCTION

This Settlement Agreement is entered into by the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") and Goodrich Corporation ("Goodrich") to resolve a dispute concerning the next phase of remedial investigation with respect to a certain 160-acre parcel of land located in the southwest quadrant of Section 21, Township 1 North, and Range 5 West, of the United States Geological Survey (USGS), 7.5 minute series "Devore, California" quadrangle map (1956, photo revised 1980) (hereafter, the "160-acre Site"). The 160-acre Site is bounded by West Casa Grande Drive on the north, Locust Avenue on the east, the extension of Alder Avenue on the west, and the extension of Summit Avenue on the south in the City of Rialto, San Bernardino County, California. The Regional Board and Goodrich are also referred to herein collectively as the "Parties."

II. RECITALS

- A. Whereas, perchlorate and TCE have been detected in certain monitoring wells and/or drinking water wells within the Rialto Groundwater Management Zone in the County of San Bernardino, California.
- B. Whereas, the Regional Board has jurisdiction over the Rialto Groundwater Management Zone and governs response actions for the protection of public health and the environment.
- C. Whereas the Regional Board has issued investigation and cleanup and abatement orders, pursuant to its authority under Water Code Sections 13267 and 13304, to a number of parties that own and/or operate, or have owned and/or operated, on the 160-acre Site and/or other locations in North Rialto. At this time, the Regional Board has made no final determination as to the actual contribution of perchlorate contamination that Goodrich may be responsible for in the Rialto Groundwater Management Zone.
- D. Whereas, Goodrich operated a facility on the 160-acre Site from approximately 1957 to 1963, which it sold in 1966.
- E. Whereas, the Regional Board alleges that, during the course of its operations, Goodrich discharged and released perchlorate and trichloroethylene (TCE) at the 160-acre Site.
- F. Whereas, on June 6, 2002, pursuant to Water Code Section 13304, the Regional Board issued Cleanup and Abatement Order No. R8-2002-0051 to Goodrich.

- G. Whereas, Goodrich denied liability and contested the issuance of Cleanup and Abatement Order No. R8-2002-0051. After holding a hearing on September 13, 2002, the Regional Board rescinded the order.
- H. Whereas, on September 24, 2002, pursuant to Water Code Section 13267, the Regional Board issued to Goodrich a directive to conduct perchlorate investigation in soil and groundwater at the 160-acre Site ("September 2002 Investigation Order"). Goodrich denied liability and contested issuance of the September 2002 Investigation Order.
- I. Whereas, on January 30, 2003, the Regional Board and Goodrich entered into an Agreement whereby the Regional Board agreed to hold in abeyance the September 2002 Investigation Order in recognition of Goodrich's separate agreement with the City of Rialto, the City of Colton, the West San Bernardino County Water District, and the Fontana Water Company to provide \$4 million for the purpose of implementing wellhead treatment at certain affected wells and other terms ("Water Purveyor Agreement").
- J. Whereas, on July 3, 2003, the United States Environmental Protection Agency ("EPA") provided a notification to the State of California, through the Regional Board, that it intended to order Goodrich to conduct a remedial investigation.
- K. Whereas, on July 15, 2003, pursuant to Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the EPA issued Unilateral Administrative Order 2003-11 to Goodrich and Emhart Industries, Inc. requiring soil and groundwater remedial investigation at the 160-acre Site ("EPA Order").
- L. Whereas, Goodrich has conducted a remedial investigation to comply with the EPA Order, including installation of four groundwater monitoring wells at the 160-acre Site and, on March 24, 2005, submitted to EPA a draft remedial investigation report.
- M. Whereas, pursuant to the consent of EPA, the Regional Board has assumed responsibility for response actions to address releases or threatened releases from the 160-acre Site, with respect to Goodrich's operations at the 160-acre Site.
- N. Whereas, the Regional Board has determined that additional remedial investigation is necessary to determine the extent of perchlorate, TCE and related contamination that is discharging, has been discharged, or threatens to be discharged from the 160-acre Site, to collect data necessary to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of perchlorate, TCE and other related contaminants at or from the 160-Acre Site and to adequately characterize the 160-Acre Site conditions for the purpose of developing and evaluating effective remedial alternatives.

- O. Whereas, after the performance of the additional remedial investigation pursuant to this Settlement Agreement, it is the Regional Board's intention that the next step will be to require responsible parties to prepare a feasibility study to evaluate alternatives to the extent necessary to select an interim remedy. During the performance of the additional remedial investigation, the Regional Board and Goodrich will attempt to work together in good faith to determine the manner in which the feasibility study will be required, including the parties who will conduct it and its scope. Nothing in this agreement precludes the Regional Board from ordering Goodrich to conduct the feasibility study after implementation of the order as set forth below in paragraph 9.
- P. Whereas, the Regional Board asserts that Goodrich is a "discharger" within the meaning of Water Code Sections 13267 and 13304.
- Q. Whereas, the Regional Board asserts that it has the authority to bring CERCLA actions pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607.
- R. Whereas, the Regional Board asserts that Goodrich is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a); that the 160-acre Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9); that perchlorate and TCE detected on the 160-acre Site and in the groundwater downgradient thereof are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and that Goodrich's operations thereon resulted in an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- S. Whereas, Goodrich denies and contests the Regional Board's assertions that Goodrich is a discharger under Water Code Sections 13267 and 13304; that it is a responsible party under Section 107(a) of CERCLA; and that its operations resulted in an actual or threatened release of hazardous substances as defined in Section 101 of CERCLA.
- T. Whereas, Goodrich contests the Regional Board's authority, including but not limited to sufficiency of evidence, to issue an order requiring Goodrich to conduct additional remedial investigation or remediation concerning the 160-acre Site.
- U. Whereas, Goodrich has brought suit in the United States District Court, Central District of California to pursue cost recovery and contribution against parties it believes are responsible for all or portions of the contamination in the Rialto Groundwater Management Zone.
- V. Whereas, the Regional Board believes that time is of the essence in the completion of the work required by the Order. The deadlines set forth in the Work Plan have been carefully considered by the Parties and pursuant to the provisions set forth below they have agreed that a stipulated penalty provision will promote timely completion of the work.

III. AGREEMENT

NOW THEREFORE,

- 1. The Regional Board, pursuant to authority granted under California Water Code Sections 13267(b)(1) and 13304 and California Government Code Section 11415.60, and Goodrich hereby agree, pursuant to this Settlement Agreement, to the Order by Consent attached hereto as Exhibit 1 (the "Order"). The objective of the Order is to facilitate the next phase of remedial investigation to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release, discharge or threatened release or discharge of perchlorate, TCE and related contaminants at or from the 160-acre Site, through implementation of additional remedial investigation, as more specifically set forth in the work plan attached hereto as Exhibit A to the Order (the "Work Plan").
- 2. As set forth in the Work Plan, Goodrich shall install five (5) groundwater monitoring wells, perform specified groundwater monitoring and prepare an additional remedial investigation report (the "Remedial Investigation Report"). At the direction of the Regional Board, for good cause, Goodrich shall install up to four (4) additional groundwater monitoring wells consistent with the Work Plan ("Additional Wells"), provided:
- 2.1 Good cause exists in that data generated in the course of the remedial investigation conducted pursuant to the Work Plan demonstrates that Additional Wells are necessary to determine the extent of perchlorate, TCE and other related contamination that is discharging, has been discharged, or threatens to be discharged from Goodrich's former operations on the 160-acre Site, to collect data necessary to determine the nature and extent of such contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of such contaminants from Goodrich's former operations on the 160-acre Site, or to adequately characterize conditions for the purpose of developing and evaluating effective remedial alternatives with respect to contamination from the former Goodrich operations on the 160-Acre Site.
- 2.2 In the event the Executive Officer believes that good cause exists to direct Goodrich to install Additional Wells, he shall notify Goodrich of his request setting forth the location of the well(s) and good cause for the request. Should Goodrich request a meeting, the Parties shall meet to discuss and resolve the Executive Officer's request.
- 2.3 In the event Goodrich does not notify the Executive Officer in writing of its agreement to install Additional Wells within 15 days after being requested in writing by the Executive Officer, the Executive Officer may submit his request to the Regional Board for a hearing with at least 30 days notice to Goodrich and the public, including the bases for the request and a description of the Additional Wells. After a public hearing, at which time Goodrich and the Executive Officer shall have the opportunity to present their respective positions and evidence to the Regional Board, the Regional Board shall determine whether to affirm or decline the Executive Officer's request. The Regional Board's decision will be final and cannot be challenged by Goodrich or the Executive Officer. Goodrich waives all rights under California Water Code Section 13320 and 13330 to the limited extent of contesting the

Regional Board's decision to require the installation of Additional Wells made in accordance with the terms of this Agreement. However, in the event Goodrich agrees to install Additional Wells or the Regional Board affirms the request of the Executive Officer, the installation of Additional Wells, or the decision of the Regional Board and compliance by Goodrich with the decision, shall not constitute an admission of liability by Goodrich. Goodrich shall retain the right to controvert any and all findings by the Executive Officer and/or Regional Board in subsequent proceedings.

- 2.4 In the event Goodrich and the Executive Officer agree upon the installation of Additional Wells, the Executive Officer shall provide at least 30 days notice to the public of the Additional Well installation.
- 2.5 In the event that Goodrich is required to install Additional Wells, either by consent or as determined by the Regional Board, the results of the investigation concerning any Additional Well shall be addressed in the Remedial Investigation Report as set forth in the Work Plan. The date for the submittal of Remedial Investigation Report shall be extended, including to permit site access, the installation of Additional Wells and the assessment of the derived data.
- Work Plan is more than 30 days late, Goodrich shall pay a stipulated penalty of \$100,000, unless the delay was caused by forces outside of its reasonable control or other good cause exists. Goodrich shall pay an additional \$100,000 penalty for each additional 30-day period the Remedial Investigation Report is late, unless the delay was caused by forces outside of its reasonable control or other good cause exists. The stipulated penalties set forth herein for the late submittal of the Remedial Investigation Report shall not be cumulative with penalties available under the Water Code or otherwise permitted under the law. Goodrich shall not be liable for any penalties for any delays in the submittal of the Remedial Investigation Report due to circumstances beyond its reasonable control, including, but not limited to, the inability to gain site access for installation and monitoring of wells and related work and delays due to conditions encountered during the course of well installation and sampling. Goodrich shall not be liable for any delays in the submittal of the Remedial Investigation Report due to the installation of Additional Wells.
- 3.1 In the event the Remedial Investigation Report is more than 30 days late and the delay was not caused by forces outside of Goodrich's reasonable control or other good cause does not exist for its delay, the Executive Officer shall so inform Goodrich in writing within seven days by certified mail. Within fifteen (15) days of receipt of the Executive Officer's notification, Goodrich shall deliver to the Executive Officer a certified Cashier's check in the amount of \$100,000 for each violation payable to the State Water Resources Control Board's Cleanup and Abatement Account. Alternatively, Goodrich may within fifteen (15) days of notification by the Executive Officer that the stipulated penalty is due, propose that any stipulated penalty due at that time, or a portion thereof, be paid to a Supplemental Environmental Project to be approved by the Executive Officer.
- 3.2 In the event that Goodrich is notified by the Executive Officer that the stipulated penalty is due, Goodrich may within fifteen (15) days of notification, request an opportunity to present evidence to the Regional Board in a duly noticed public hearing that the

delay was caused by forces outside its reasonable control, or that the stipulated penalty should be excused for other good cause, including but not limited to, the inability to gain site access for installation and monitoring of wells and related work, delays due to conditions encountered during the course of well installation and sampling, and delays due to the installation of Additional Wells. The Regional Board's decision whether to impose, or relieve Goodrich from, stipulated penalties shall be final and binding. Goodrich hereby waives all rights under California Water Code Sections 13320 and 13330 to the limited extent of contesting the Board's final decision to impose a stipulated penalty made in accordance with the terms of this Agreement.

- 4. The Regional Board shall rescind the September 2002 Investigation Order.
- 5. The Regional Board and Goodrich recognize that this Agreement, the Order and Work Plan have been negotiated in good faith and that the actions undertaken by Goodrich in accordance with the Agreement, the Order and Work Plan do not constitute an admission of liability. Goodrich denies liability, does not admit, and retains the right to controvert in any subsequent proceedings, the validity of the findings of fact, conclusions of law, and any other determinations stated or implied in this Settlement Agreement or the Order. Goodrich agrees not to contest the issuance of the Order. The Regional Board, by this Settlement Agreement, does not waive its rights to issue subsequent orders. Goodrich, by this Settlement Agreement, does not waive its rights to contest subsequent Regional Board actions with respect to the implementation or interpretation of the Order should a dispute arise, nor does Goodrich waive any rights, except to the extent specifically set forth above in Sections 2.3 and 3.2, to contest future actions of the Regional Board, including but not limited to, subsequent orders. Goodrich shall retain any and all rights to seek recovery of costs and/or contribution for costs incurred in the performance of the remedial investigation.
- 6. The work conducted under the Order shall be performed in a manner consistent with the National Oil and Hazardous Substance Pollution Contingency Plan, Title 42, United States Code, Section 9605 and Code of Federal Regulations, Title 40, Part 300 ("NCP"). The Regional Board agrees to assist Goodrich with activities that may be required to demonstrate consistency with the NCP.
- 7. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).
- 8. Goodrich in good faith will assist the Regional Board and will participate in hearings with respect to the issuance of orders and enforcement actions concerning other potential dischargers/potentially responsible parties, including conducting cross examination of witnesses as appropriate. Nothing in this Settlement Agreement, however, will require Goodrich to waive any defenses or privileges.
- 9. During the implementation of the Order, the Regional Board shall not otherwise require Goodrich to conduct an investigation, remediation, or otherwise respond with respect to the contamination nor request any other agency, including the U.S. Environmental Protection Agency, to so order it to do so.

- 10. This Settlement Agreement may be executed in counterparts and by facsimile signature.
- 11. This Settlement Agreement is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
- 12. The Parties agree that the normal rule of construction, which allows any ambiguities in an agreement to be construed against the drafting party, shall not be employed in the interpretation of this Settlement Agreement, and that this Settlement Agreement shall be given its fair meaning.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed by their respective duly authorized representative on the dates set forth below, and this Settlement Agreement shall be effective as of the most recent date signed.

Ву:	
Date:	
Goodri	ich Corporation
Ву:	
Date:	

California Regional Water Quality Control Board

California Regional Water Quality Control Board Santa Ana Region

Remedial Investigation Order by Consent No. R8-2005-0121 For Goodrich Corporation

160-acre Site located in the City of Rialto, San Bernardino County

The California Regional Water Quality Control Board, Santa Ana Region ("Regional Board"), finds that:

- 1. Perchlorate and TCE have been detected in certain monitoring wells and drinking water wells within the Rialto Groundwater Management Zone.
- 2. Municipal water supply wells in the Rialto Groundwater Management Zone have been, or are likely to be, affected by the perchlorate and/or TCE pollution. Regional Board staff has identified numerous parties, and continues in its efforts to identify all parties, that may have discharged perchlorate and/or TCE in the Rialto Groundwater Management Zone.
- 3. The Regional Board has jurisdiction over the Rialto Groundwater Management Zone, has been conducting an investigation of the perchlorate contamination, and has issued a number of orders pursuant to its authority under Water Code Sections 13304 and/or 13267.
 - 4. The beneficial uses of the Rialto Groundwater Management Zone include:
 - (a) Municipal and domestic supply,
 - (b) Agricultural supply,
 - (c) Industrial service supply, and
 - (d) Industrial process supply.
- 5. Goodrich Corporation ("Goodrich") formerly owned property and conducted operations at a 160-acre parcel located in the southwest quadrant of Section 21, Township 1 North, and Range 5 West, of the United States Geological Survey (USGS), 7.5 minute series "Devore, California" quadrangle map (1956, photo revised 1980) (hereafter, the "160-acre Site"). The 160-acre Site is bounded by West Casa Grande Drive on the north, Locust Avenue on the east, the extension of Alder Avenue on the west, and the extension of Summit Avenue on the south in the City of Rialto, San Bernardino County, California. Numerous other parties have operated at and/or are currently operating on the 160-acre Site. Goodrich's operations, as well as those of other parties, allegedly involved the use of perchlorate.
- 6. Pursuant to Unilateral Administrative Order 2003-11, issued by the United States Environmental Protection Agency ("EPA") to Goodrich and Emhart Industries, Inc.,

Goodrich has conducted a remedial investigation at the 160-acre Site, including the installation of four groundwater monitoring wells. Goodrich submitted a draft Remedial Investigation Report to EPA on March 24, 2005.

- 7. EPA has deferred to the Regional Board regarding oversight of Goodrich's investigation of perchlorate contamination potentially emanating from the 160-acre Site.
- 8. Based on the facts presented herein, the Regional Board suspects Goodrich of having discharged waste, or depositing waste where it may have been discharged, into the waters of the state and creating a condition of pollution or nuisance. At this time, the Regional Board has not made a final determination as to the actual contribution of perchlorate contamination that Goodrich may be responsible for in the Rialto Groundwater Management Zone.
- 9. The Regional Board finds that additional investigation is necessary to investigate the lateral and vertical extent of perchlorate that is discharging, has been discharged, or threatens to be discharged from the 160-acre Site. The necessity of this investigation is to protect the public health and the environment, and particularly the groundwater of the State of California.
- 10. It is appropriate to order Goodrich to conduct additional investigation regarding the lateral and vertical extent of perchlorate that is discharging, has been discharged, or threatens to be discharged from the 160-acre Site.
- 11. Other orders may be issued at a later date by the Regional Board to other parties associated with the 160-acre Site, or other area properties, if Regional Board staff obtains additional information indicating that other parties have discharged perchlorate that is present in the soil or groundwater.
- 12. Water Code Section 13304 allows the Regional Board to recover reasonable expenses for overseeing investigation or cleanup and abatement activities. It is the Regional Board's intent to recover such costs for regulatory oversight work conducted in accordance with this order.
- 13. This enforcement action is being taken by a regulatory agency to enforce a water quality law. Such action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) in accordance with Section 15321, Article 19, Division 3, Title 14, California Code of Regulations.
- 14. The Regional Board and Goodrich have entered into an Administrative Settlement Agreement on December 12, 2005, pursuant to which Goodrich consents to the following order subject to the terms of said agreement.

IT IS HEREBY ORDERED THAT, pursuant to the Administrative Settlement Agreement between the Regional Board and Goodrich approved by the Regional Board on December 12, 2005 and Section 13267(b)(1), Article 4, Chapter 4, Division 7 and Section 13304, Article 1, Chapter 5, Division 7, of the California Water Code, Goodrich shall investigate the effects of the discharge of waste at the 160-acre Site, as follows:

- 1. Goodrich shall implement the Work Plan, attached hereto as Exhibit A, which is subject to approval by the Executive Officer, to install groundwater monitoring wells, perform specified groundwater monitoring and prepare an additional remedial investigation report (the "Remedial Investigation Report").
- 2. The Work Plan shall be implemented in accordance with time schedules set forth in the Work Plan or otherwise approved by the Executive Officer.
- 3. The Regional Board shall develop a community relations plan consistent with applicable regulations, including the National Oil and Hazardous Substance Pollution Contingency Plan, Title 42, United States Code, Section 9605 and Code of Federal Regulations, Title 40, Part 300. Goodrich shall assist the Regional Board, as requested, to implement the community relations plan.
- 4. The Regional Board hereby rescinds its investigation order of September 24, 2002, issued to Goodrich pursuant to Water Code Section 13267.
- 5. The Executive Officer is hereby authorized to enforce this order as set forth in the Administrative Settlement Agreement and to seek judicial enforcement of this order as permitted under the Water Code in the event of Goodrich's failure to comply with it.
- I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on November 16, 2005.

	J. Thibeault ive Officer	
Agreed	l to by Goodrich Corporati	on
Ву:		
Date:		

EXHIBIT D



California Regional Water Quality Control Board

Santa Ana Region



3737 Main Street, Suite 500, Riverside, California 92501-3348 Phone (951) 782-4130 - FAX (951) 781-6288 - TTY (951) 782-3221 http://www.waterboards.ca.gov/santaana



November 1, 2005

Robert D. Wyatt, Esq. Allen Matkins Leck Gamble & Mallory Three Embarcadero Center, 12th Floor San Francisco, CA 94111-4074

Ms. Linda H. Biagioni
Vice President, Emhart Industries, Inc.
Vice President for Environmental Affairs, Black & Decker Corporation
701 East Joppa Road
Towson, MD 21286

RE: FORMER WEST COAST LOADING CORPORATION SITE IN RIALTO, CA – GROUNDWATER INVESTIGATION

Dear Mr. Wyatt and Ms. Biagioni:

The Regional Board wishes to make you aware of a proposed Administrative Settlement Agreement between the Regional Board and Goodrich Corporation (Goodrich). Under the terms of the proposed Agreement, Goodrich would undertake the placement of at least five groundwater monitoring wells in the vicinity of the 160-acre site formerly occupied by, among others, West Coast Loading Corporation (WCLC) and Goodrich. The work would be conducted pursuant to an approved work plan. The Agreement calls for the possibility that additional wells may be required based on the initial information produced and requires adherence to a work schedule. The data would be used to make informed decisions about the likely sources of perchlorate and trichloroethylene contamination found downgradient from the site, and would be used in a future feasibility study to evaluate remedial alternatives.

The Regional Board will consider whether or not to approve the Agreement on November 16, 2005.

As you know, the Regional Board has issued a Cleanup and Abatement Order (CAO) to Emhart Industries, Inc., and Black & Decker (U.S.), Inc., on the basis of evidence that their predecessor in interest, WCLC, discharged perchlorate at its facility formerly located on the 160-acre site. The CAO is scheduled to be considered by the Regional Board at a public hearing in May 2006.

California Environmental Protection Agency



Copies of the proposed Goodrich Administrative Settlement Agreement and Remedial Investigation Order by Consent are enclosed for your consideration. (These documents and related information are also available on our web site at http://www.waterboards.ca.gov/santaana/html/perchlorate.html) If Emhart and Black & Decker are interested in conducting additional groundwater investigations comparable to and complementary of the proposed Goodrich investigation, we would be interested in exploring an interim settlement agreement along the lines of the proposed Goodrich Agreement. Please advise us by November 17, 2005, if you have any interest in discussing such an agreement.

The Regional Board Staff Advocacy Team has no current plans to ask the Regional Board to delay the schedule currently set for its consideration of the CAO. However, we would be open to further discussions on that issue depending on the substance of your response to this letter. If you have any questions or wish to discuss this issue further, please contact me at (951) 782-3286 or Jorge Leon at (916) 341-5180.

Sincerely,

Kurt V. Berchtold

Enclosure:

Assistant Executive Officer

KtV Bltl

Proposed Administrative Settlement Agreement and Remedial Investigation Order by Consent

cc: Jorge Leon, Office of Chief Counsel, SWRCB

EXHIBIT E

Allen Matkins

www.allenmatkins.com

Allen Matkins Leck Gamble & Mallory LLP Attorneys at Law Three Embarcadero Center, 12th Floor | San Francisco, CA 94111-4074 Telephone: 415.837.1515 | Facsimile: 415.837.1516

Robert D. Wyatt

E-mail: rwyatt@allenmatkins.com

Direct Dial: 415 273 7471 File Number: E2602-004/SF660242.01

November 15, 2005

VIA ELECTRONIC MAIL

Kurt Berchtold Assistant Executive Officer California Regional Water Quality Control Board Santa Ana Region 3737 Main St., Suite 500 Riverside, CA 92501-3339

Re:

Your Letter of November 1, 2005 and the November 16, 2005 Special Meeting

Dear Mr. Berchtold:

This letter, written on behalf of Emhart Industries, Inc. ("Emhart"), responds to your letter of November 1, which solicited Emhart's interest in undertaking certain additional investigation work in connection with the 160 acre Rialto site. Given the various public comments made by other interested parties on the proposed Goodrich Work Plan and Settlement Agreement, set for hearing today before the Regional Board, Emhart also asked that we submit this letter in advance of that special meeting so that staff would have the benefit of Emhart's site investigation proposal before the meeting begins.

Accordingly, Emhart proposes the following:

- 1. At its own expense, Emhart will retain an environmental consultant to prepare and implement an investigative work plan designed to more fully identify sources of perchlorate and TCE contamination on the 160 acre site. Obviously, if there are active sources of such contaminants, they must be identified and addressed before any meaningful and cost-effective remedy can be put in place. Attachments A and B identify the location of and reason for each of the 306 proposed additional soil borings and soil gas samples.
- 2. As a result of its review of available existing data, Emhart's consultant has identified three likely significant sources of perchlorate (and possibly TCE) contamination (Attachment A) within the 160 acre site that have not yet been adequately characterized: the Goodrich burn pits; the Goodrich and other PRP historic disposal pits, and the McLaughlin pit. A summary of the evidence demonstrating the inadequacy of that characterization to date is set forth in

Allen Matkins Leck Gamble & Mallory LLP Attorneys at Law

Kurt Berchtold November 15, 2005 Page 2

Attachment C and will be presented at the November 16 special meeting. Emhart proposes to conduct additional sampling in these three areas; specifically, additional shallow soil borings in the pit areas themselves and a number of deeper soil samples up to 200 feet below the surface after initial screening analysis.

- 3. Over the last ten months, certain anecdotal testimony of former employees of West Coast Loading Corporation and Goodrich Corporation has been given in the pending federal litigation regarding possible disposal of perchlorate and TCE on the 160 acre site. Emhart's consultant has considered that information and created Attachment B which identifies the proposed location and number of additional soil borings and soil gas samples to further evaluate that information.
- 4. Emhart proposes to meet with Regional Board staff and U.S. EPA Region 9 and come to an agreement on the sample numbers, locations and other technical issues.
- 5. Emhart believes that the proposed work plan could be easily finalized as a supplement to Emhart's existing work plan previously reviewed and approved by Board staff and the U.S. EPA that was implemented in 2004.
- 6. Emhart and Board staff would negotiate the terms of an acceptable agreement implementing the above.

In closing, Emhart's consultant has had only a few hours to review the GeoSyntek work plan "addendum" provided to us at close of business on November 15 but remains convinced that further site characterizations as proposed herein should precede the installation of the Goodrich deep wells, even as revised. Absent this additional essential information, there is a significant possibility that the proposed deep well data will provide incomplete and misleading information for the GeoSyntek stated purposes.

Very truly yours,

Robert D. Wyatt

Attachments

Investigation of the 160-Arce Parcel in Rialto, California Existing and Proposed Soil and Soil Gas Sampling Locations

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Weighing perchlorate [G] P2 10 - - B - Possible perchlorate release 100-gallon mixer [G] P3 31 - 2 - Possible perchlorate release Sidewinder salvage [G] P4 1 - 8 - Possible perchlorate release Laboratory [G] P5 20 - 8 - Possible perchlorate release Laboratory [G] P5 20 - 8 - Possible perchlorate release Notes: Total Proposed Sample Locations 76 51 Possible perchlorate release Notes: Total Proposed Samples 152 102 A All a Sododrich [P] = Pyrotronics (1) All soll gas samples will be analyzed for abbreviated list of VOCs, including TCE, using EPA Method 8260B.	Screen-dry perchlorate [G]	Ρ1	12	١	1	2	1	Possible perchlorate release
100-gallon mixer [G] P3 31 2 Possible perchlorate release Sidewinder salvage [G] P4 1 8 Possible perchlorate release Laboratory [G] P5 20 8 Possible perchlorate release Laboratory [G] P5 20 8 Possible perchlorate release Total Proposed Sample Locations 76 51 Possible perchlorate release Notes: [W] = WCLC [G] All Sold Samples will be analyzed for abbreviated list of VOCs, including TCE, using EPA Method 8260B.	,	Zd	10	1	1	8		Possible perchlorate release
Sidewinder salvage [G] P4 1 - 8 - Possible perchlorate release Laboratory [G] P5 20 - 8 - Possible perchlorate release Laboratory [G] Fotal Proposed Sample Locations 76 51 Possible perchlorate release Notes: Fotal Proposed Samples 152 102 Analysis [M] = WCLC [G] = Goodrich [G] = Goodrich Fototronics [P] = Pyrotronics (1) All soil gas samples will be analyzed for abbreviated list of VOCs, including TCE, using EPA Method 8260B.		P3	31	1	i	2		Possible perchlorate release
Laboratory [G] P5 20 — — B — Possible perchlorate release Total Proposed Sample Locations 76 51 A A A A B A B	_	P4	-	:	1	8		Possible perchlorate release
Total Proposed Sample Locations 76 51 Notes: IVI Total Proposed Samples 152 102 [W] = WCLC [G] = Goodrich [F] = Pyrotronics [Total Proposed Samples will be analyzed for abbreviated list of VOCs, including TCE, using EPA Method 8260B. FPA Method 8260B.	1	P5	20	_	1	8		Possible perchlorate release
Total Proposed Samples 152 102 Notes: [W] = WCLC [G] = Goodrich [P] = Pyrotronics (1) All soil gas samples will be analyzed for abbreviated list of VOCs, including TCE, using EPA Method 8260B.			Total Proposed &	Sample L	ocations.	9/	51	
Notes: [W] = WCLC [G] = Goodrich [P] = Pyrotronics (1) All soil gas samples will be analyzed for abbreviated list of VOCs, including TCE, using EPA Method 8260B.			Total P.	pesodo	Samples	152	102	
 [W] = WCLC [G] = Goodrich [P] = Pyrotronics (1) All soil gas samples will be analyzed for abbreviated list of VOCs, including TCE, using EPA Method 8260B. 	Notes:							
 [G] = Goodrich [P] = Pyrotronics All soil gas samples will be analyzed for abbreviated list of VOCs, including TCE, using EPA Method 8260B. 	[w] = wcrc							
[P] = Pyrotronics(1) All soil gas samples will be analyzed for abbreviated list of VOCs, including TCE, using EPA Method 8260B.	[G] = Goodrich							
(1) All soil gas samples will be analyzed for abbreviated list of VOCs, including TCE, using EPA Method 8260B.	[P] = Pyrotronics					:		
	(1) All soil gas samples will be anal	yzed for abbreviate	d list of VOCs, incl	uding TC	E, using EP,	√ Methor	1 8260B.	

- (c) All soil samples will be analyzed for VOCs using Method 8260B and for perchlorate using Method 314.0 Modified (3) Two samples are proposed for each shallow sample location at 6 & 12 ft.
 - (3) Two samples are proposed for each shallow sample location at 6 & 12 ft. If the 6-foot deep sample results indicate no impact the 12-foot deep samples will not be analyzed.

Previous and Proposed Soil Sampling Locations in Investigation Areas C and D Investigation of the 160-Arce Parcel in Rialto, California

W. P. S. AGIVILY	Area Building Designation: Designation	Building Designation	San Soll	Samplings Soll Solicas	Proj Sam Soll	Soll Soll Gas	Rationale for Sampling
Goodrich Burn Pit Area	2	1	9	12	9	-	Inadequate Investigation
Pyrotronics McLaughlin Pit - Deep Soil Boring to 200 ft. (3, 4)	2	1		ŧ	1		Inadequate Investigation
Goodrich Burn Pit Area Deep Soil Boring to 200 ft.	၁	-	-	ı	Folk	Follow-on	
Goodrich & Pyrotronics Disposal Pits Area	۵	-	4	18	10	1	Inadequate Investigation
Goodrich & Pyrotronics Disposal Pit Area - Deep Soil Boring to							
200 ft. (3, 4)	۵	ł	ł	1	Folic	Follow-on	
		Total Proposed Sample Locations	Sample	Locations	17	0	
		Total I	Proposec	Total Proposed Samples	52	0	
Notes:							

- (1) All soil samples will be analyzed for VOCs using Method 8260B and for perchlorate using Method 314.0 Modified.
 - (2) Two samples are proposed for each shallow sample location at 6 & 12 ft.
- If the 6-foot deep sample results indicate no impact the 12-foot deep samples will not be analyzed.
 - (3) The 200-foot deep boring will be sampled every 10 feet. Thus, 20 samples will be collected.
- (4) The 10 foot sample and every other subsequent sample will be analyzed. If additional resolution is needed
 - the other samples will be analyzed.

Proposed Additional Investigation of Perchlorate and VOC Source Areas 160-Acre Parcel, Rialto, California





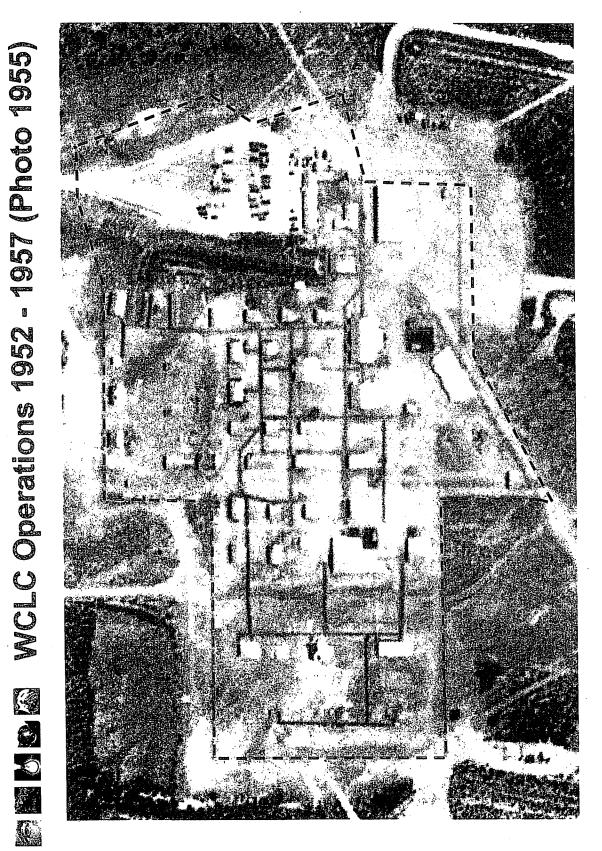


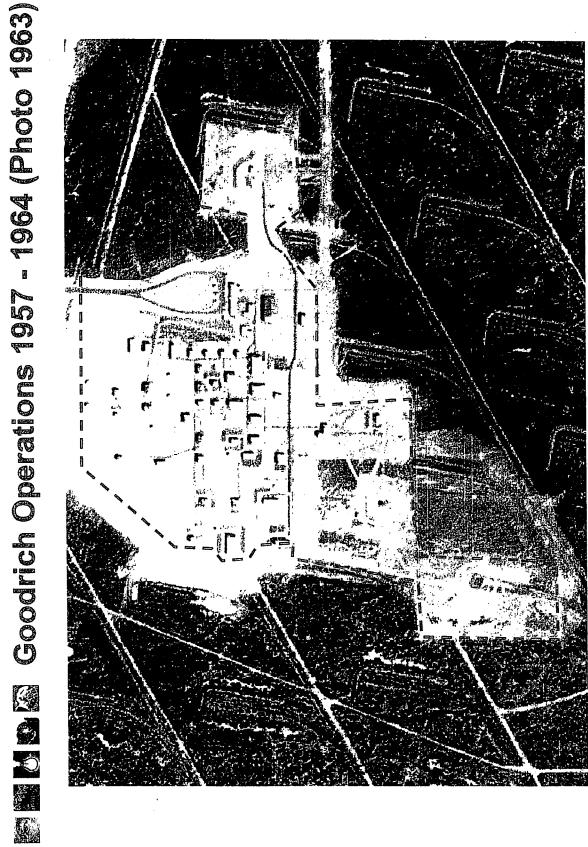




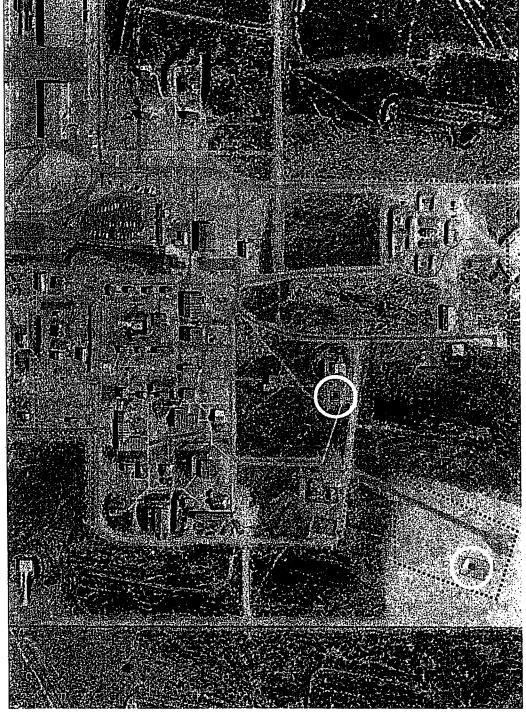


Santa Ana Regional Water Quality Control Board Presented by Emhart Industries, inc. to the November 16, 2005



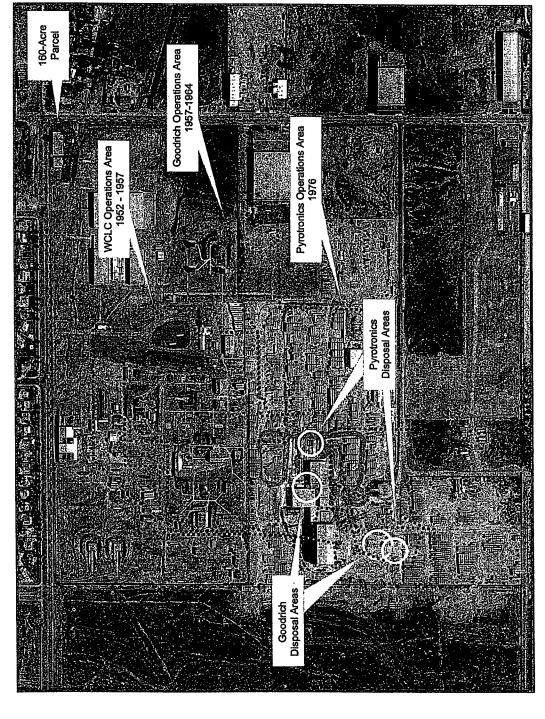


Pyrofronics Operations 1965 - 1986

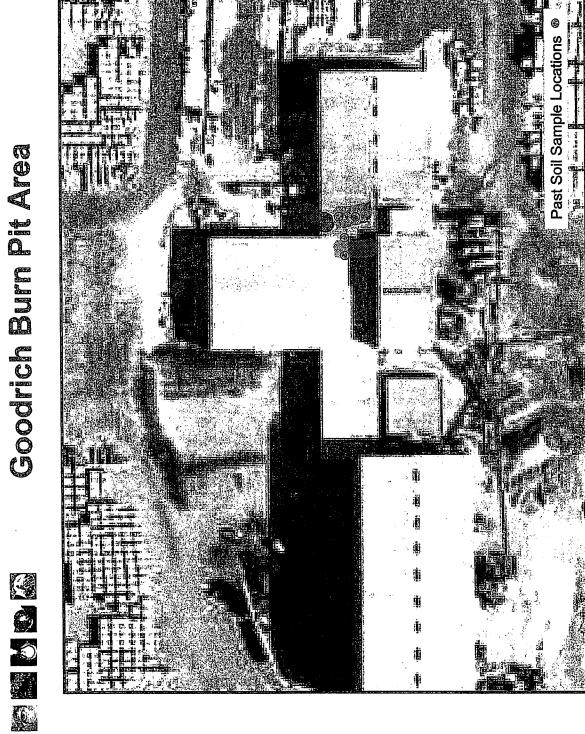




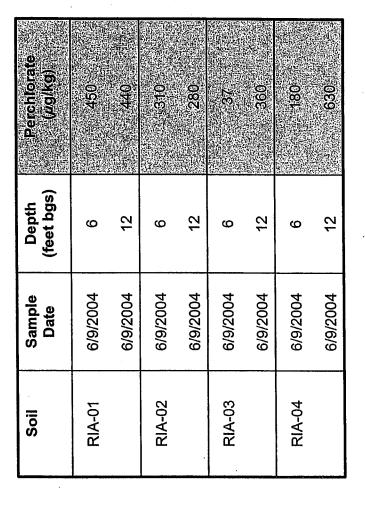
Operations & Disposal Areas 1957 - 1986







Perchorate in Soil - Goodrich Burn Pit Area





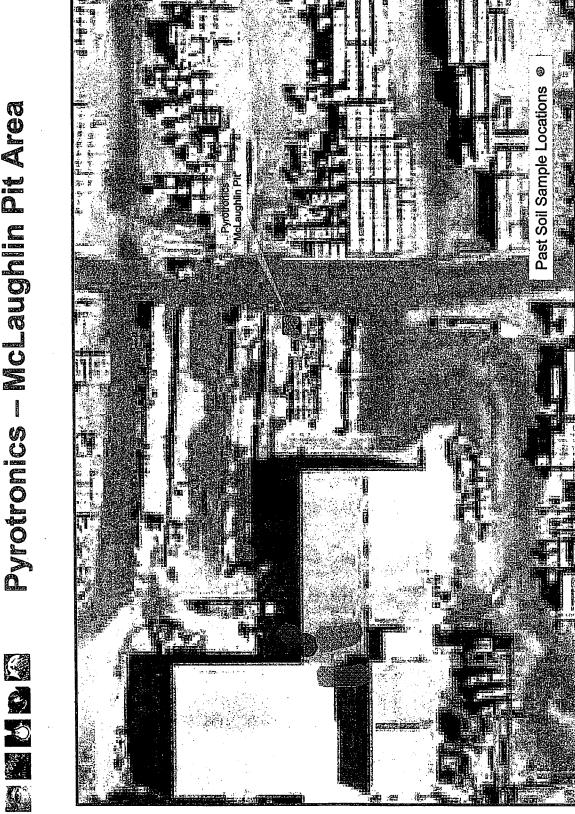


E E E E E Goodrich Pyrotronics – Waste Disposal Pit Area

Service of Soil - Waste Disposal Pit Area

Soil	Sample Date	Depth (feet bgs)	Perchlorate [ug/kg]
RIA-05	6/9/2004	9	<u>a</u>
	6/9/2004	12	I ND
RIA-06	6/9/2004	9	QN)
	6/9/2004	12	ND .
RIA-07	6/9/2004	9	ÚN.
	6/9/2004	12	ND
RIA-08	6/9/2004	9	- QN
	6/9/2004	12	ND





Pyrofronics - Niclaughlin Dit Area

Secondate in Soil - Nclaughin Pit Area

Soil	Sample Date	Depth (feet bgs)	Perchlorate (#g/kg)
	1/5/2005	6	189,000
B-1	1/5/2005	15	205.000
	1/5/2005	20	1000.000
	1/5/2005	6	16,700
B-2	1/5/2005	15	15.800
	1/5/2005	20	14,600
BPSW-4	12/22/2004	4	9,860
BPSW-5	12/22/2004	5	5,490
BPWW-4	12/22/2004	4	247



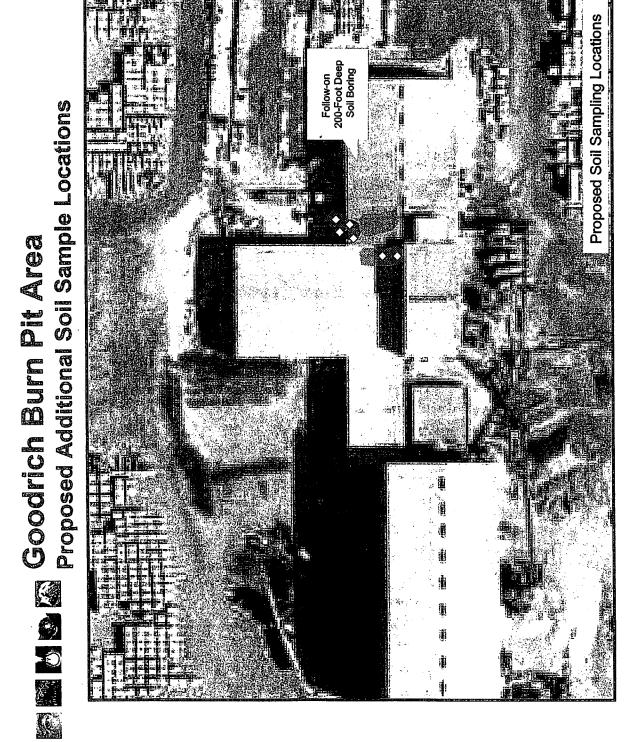
Dotential Significant Source Areas for Further Investigation

A AGIIVIDA	Area Designation	Area Building Sampling Designation Soli Solicas	Pre Sar	Previous Sampling	Pho Sar Soll	Sampling: Soil Soil Gas	Rationaleifor Sampling
Goodrich Burn Pit Area	O	1	5	12	9	1	Inadequate Investigation
Pyrotronics McLaughlin Pit - Deep Soil Boring to 200 ft. (3, 4)	ပ	l	1	-	-		Inadequate Investigation
Goodrich Burn Pit Area Deep Soil Boring to 200 ft.	O	1	ı	ı	Foll	Follow-on	
Goodrich & Pyrotronics Disposal Pits Area	۵	1	4	18	10	1	Inadequate Investigation
Goodrich & Pyrotronics Disposal Pit Area - Deep Soil Boring to 200					*		
ft. (3, 4)	Ω	1	ı	ı	Fo	Follow-on	
		Total Proposed Sample Locations	Sample	Locations	17	0	
		Total I	Propose	Total Proposed Samples	52	0	

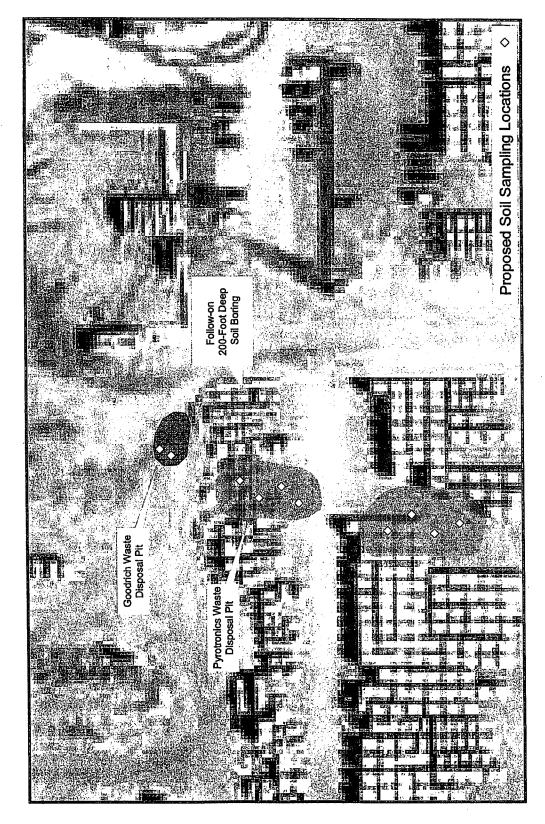


Dotential Other Source Areas for Further Investigation

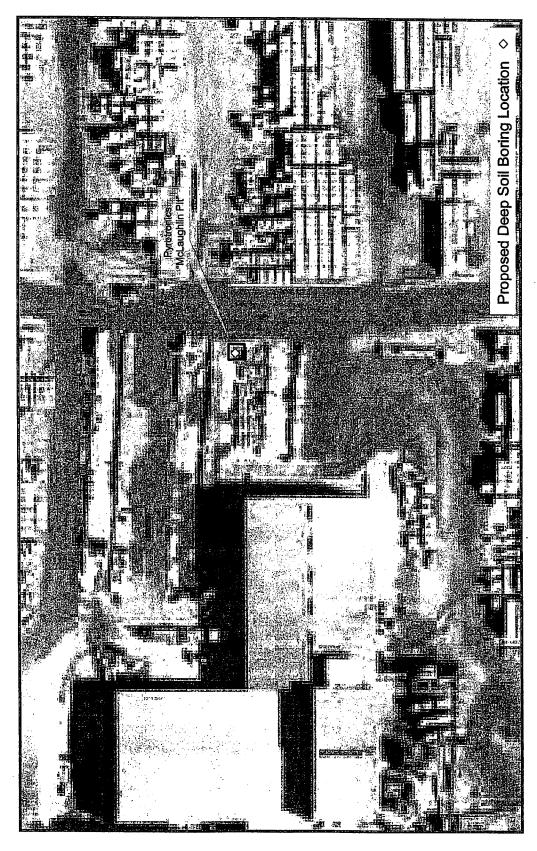
			Pre	Previous	Pro	Proposed	
- 10-10-0	Area	Building	San	Sampling	San	Sampling	Rationale for Samoling
Activity	Designation	Designation	lioS	Soil Gas	Soil (2,3)	Soil Gas (1,3)	
Research mixers [G]	4	2, 3, & 4	1	18	9	-	Possible perchlorate release
150-dallon mixer area [G] [P]	æ	1	ı	12	8	8	Possible perchlorate/TCE release
	Ш	26	9	9	2	2	Possible impact from bolier water
Soil/mck pile IW1	ட	1	9	9	2	2	Possible perchlorate/TCE release
Drum storage [W]	29	1	1	4	1	l	Drum storage, stained area
Drum storage IW1	G2		1	9	ı	4	Drum storage, stained area
Scrao metal storage [W]	£	27	ı	2	ı	1	Stained area
Scrao metal storade [W]	모	27	1	4	1	1	Stained area
Press building IW	-	49	ı	4	1	1	Stained area, drums
Mixing IWI	5	8	ı	2	1	2	Stained area, drums
Assembly shop [W]	잗	35	ì	4	1	1	Possible solvent use
Assembly shop [W]	젌	35				4	Possible solvent use
Assembly shop [W]	1	1	1	7	-	4	Possible solvent use
Assembly shop [W]	F7	43	,	4	1	2	Possible solvent use
Maintenance shop fW7	L4	18	1	I	1	9	Possible solvent use
Weigh-blend photoflash [W]	Æ	40	1	1	4	2	Possible perchlorate release, barrels
Fill photoflash cartridges [W]	M2	42	l	1	4	2	Possible perchlorate release, barrels
	M3	47	ı	l	2	2	Possible perchlorate release, staining
Weigh perchlorate [W]	M4	48	1	1	2	3	Possible perchlorate release
Weigh perchlorate [W]	M5	30			2	ı	Possible perchlorate release
Mixing IW1	M6	7			2	ı	Possible perchlorate release, staining
Mixing phosphorus pellets [W]	M7	50			2		Possible perchlorate release
	۶	34	l	l	2	2	Possible perchlorate release, staining
Alleged trenching & disposal	ZZ	-		1	4	4	Possible waste disposal
Float block storage	N3				7	2	Possible perchlorate -VOC releases
Incinerator areas [W]	A	-			4	2	Possible perchlorate -VOC releases
Screen-dry perchlorate [G]	P1	12	1	-	2	ı	Possible perchlorate release
Weighing perchlorate [G]	P2	10	-	**	8	1	Possible perchlorate release
100-gallon mixer [G]	P3	31	ı	1	2	1	Possible perchlorate release
Sidewinder salvage [G]	P4	1	1	ı	8	ı	Possible perchlorate release
Laboratory [G]	P5	20	1	1	8	-	Possible perchlorate release
		Total Proposed Sample Locations	Sample	Locations	76	51	
	٠	Total F	roposed	Total Proposed Samples	152	102	



Soodrich & Pyrotronics Waste Disposal Pit Area Proposed Additional Soil Sample Locations



Pyrotronics 'McLaughlin Pit' Area Proposed Deep Soil Boring Location



Services Proposed Additional Samples

Area Designation	Soil Boring	Soil Gas Sample
Potentially Significant Source Areas	52	·
Other Areas	152	102
TOTAL	204	102

EXHIBIT F

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

TITLE: Emhart Industries, Inc. vs. California Regional
Water Quality Control

DATE & DEPT.
November 8, 2004
Dept. 7

COUNSEL: None present

REPORTER: None

NUMBER:
RIC 397528
Dept. 7

SUPERIOR COUNT OF CALIFORNIA
COUNTY OF RIVERSIOE

NOV 0 8 2004

PROCEEDING: STATEMENT OF DECISION

M. McQueen

The Court begins with the assertion of petitioner that is easiest to dispose of - that Water Code § 13267 is unconstitutional on its face. For such a finding, the court must conclude that there is no set of circumstances under which the act would be valid. United States v. Salerno, (1987) 481 U.S. 739. Water Code § 13267 is extremely broad and purports to apply in a wide array of situations. The statute is the authorizing statute for the local Board to take investigative steps in cases ranging from where someone is conclusively found to be currently discharging toxic material in to the water supply to where someone is merely suspected of having once discharged a single pollutant in the distant past. The statute can be used by the local board to simply command someone to supply copies of existing reports at minimal expense, or to order them to finance the creation of reports costing potentially thousands, if not millions, of dollars. The statute authorizes the local board to require property owners to test their own property for the existence of contaminates, or to require suspected dischargers to test vast acreages of land they do not own in order to determine the extent of a suspected spill. The statute purports to apply in situations involving a health emergency as well as situations in which the health concern is less pressing. Procedurally, the statute places certain minimum requirements on the local board, but does not limit the local board in any way from providing additional procedural safeguards. Given all the above, the court can easily conceive of a myriad of situations where the statute could be applied in a constitutional fashion.

The far more difficult question is whether or not the statute as applied in this particular case afforded Petitioner both substantive and procedural due process. It is undisputed that the order in question calls for Petitioner to hire experts to conduct numerous tests, both on and off Petitioner's property. While the parties dispute the precise cost (and whether this expense could be shared with others) the court accepts as true the assertion of Petitioner that compliance with the order in question would cost many thousands of dollars.

The court also concludes that the local board did not, in fact, give Petitioner an opportunity to present evidence in an attempt to persuade the board to rescind the order. Inviting Petitioner to meet with staff to discuss the exact parameters of the required testing, and the possibility of cost-sharing with other suspected dischargers, is not equivalent to an evidentiary hearing on whether or not the entire order should be rescinded.

MINUTES OF SUPERIOR COURT

EMHART INDUSTRIM, INC., vs. CALIFORNIA REGION WATER QUALITY CONTROL, CASE NO. RIC 397528

A significant number of ambiguities in this case are what findings the local board did or did not make before issuing the order, and what standard of proof did they use in making said findings. Respondent requests this court to review the record and conclude that it supports a finding that Petitioner is the appropriate corporate successor to an entity that discharged significant quantities of pollutants into the watershed 50+ years ago. The problem with such a request is that the local board has not yet examined the evidence and come to such a conclusion. The court is taking judicial notice of the fact that soon before the order in this case was issued, the board held an evidentiary hearing on closely related questions in the context of a clean-up order. At the conclusion of that hearing the local board concluded that the evidence was inconclusive. Respondent has opposed this Writ by asserting that Water Code § 13267 permits the orders issued in this case based solely on a finding of suspicion of past discharging of pollutants. The most reasonable reading of the record in this case is that, at the time the order was issued in this case, the local board was operating under the assumption that suspicion was all that was required, and suspicion is all that the board concluded existed.

In sum, the court concludes: (1) Respondent issued an order to Petitioner that would require Petitioner to spend many thousands of dollars (which would not be refunded to Petitioner under any circumstances) for expert testing for the presence of possible pollutants on land not owned by Petitioner. (2) Said order was without a prior hearing in which Petitioner was given the opportunity to present evidence; and without an invitation to participate in such a hearing after the order was issued. (3) Said order was based on a finding by Respondent that Petitioner was merely "suspected" of having been the legitimate corporate successor to an entity responsible for a discharge of a pollutant 50 years ago. (4) The health risk that prompted the order, while important, was not of an emergency nature that would require expedited procedures.

Procedural Due Process: Water Code § 13267 neither requires, nor precludes, an evidentiary hearing before the local board. Petitioner seeks a ruling that either invalidates Water Code § 13267 for failing to require such a hearing, or which interprets Water Code § 13267 in such a way as to require such a hearing. The problem with such an approach is that Water Code § 13267 gives the local board great flexibility regarding what items they request of suspected polluters. If the local board were only to request simply the submission of technical reports already in existence, procedural due process would not require such a hearing. But, the more onerous the burden created by the §13267 order, the greater the procedural due process requirements. Given the size of the burden in this case, due process requires that Petitioner be afforded an opportunity (as a matter of right, not discretion) to present evidence that would show that it should not be the subject of such an order.

MINUTES OF SUPERIOR COURT

EMHART INDUSTR' , INC., vs. CALIFORNIA REGION WATER QUALITY CONTROL, CASE NO. RIC 397528

Substantive Due Process: Water Code § 13267 refers to situations where the entity being ordered to do testing is both found to an illegal discharger, or is merely suspected of being an illegal discharger. The parties to this Writ have argued over the various meanings of the word "suspected." In the criminal law context, "suspicion," without any modifier (bare suspicion or mere suspicion), is recognized as being an insufficient basis for any government action against an individual no matter how slight the action might be. A "reasonable suspicion" permits the temporary detention of an individual, or in certain settings such as schools, the search of an individual. An "honest and strong suspicion" equates to Probable Cause to arrest and/or search an individual, or to hold a defendant to answer for trial following a preliminary hearing. "Honest and strong suspicion" does not permit the imposition of any penalty or other sanction against anyone. In the criminal context, no penalty may be imposed absent a finding of guilt beyond a reasonable doubt. In the civil context, a monetary sanction may be imposed only upon a finding of wrongdoing by a Preponderance of the Evidence, a standard higher than Probable Cause or honest and strong suspicion.

The court declines the invitation by all sides to define the word "suspected" in Water Code § 13267. The requirements of Due Process will depend on the circumstances of each case. Factors might include: (1) the size of the burden in producing the requested reports; (2) the scope of the danger to public health if the reports are not produced; (3) the immediacy of the danger to public health if the reports are not produced; (4) whether the required testing is to performed solely on the property owned by the entity being ordered to do the testing, or whether the §13267 order seeks testing on other property.1

In this case, given the large size of the burden (many thousands of dollars), the demand for testing over square miles of land not owned by Respondent, and the non-emergent nature of the public health threat, the court concludes due process requires that such testing cannot be ordered absent a finding of current or past discharge on a Preponderance of Evidence standard.

Because the court finds that Water Code § 13267 was applied in this instance in a way contrary to both substantive and procedural due process, Petitioner's request for a Writ of Mandate is granted.

Petitioner is to prepare the appropriate order.

G. Reyes (mm), Clerk

Cillo Gov Judge

¹ An order to simply test for the presence of pollutants on one's own property need not necessarily rest on a finding of wrongdoing by the property owner. Mere ownership of contaminated soil can properly subject the owner to regulatory burdens. An order that someone pay for testing on other people's property, however, can only be justified by a finding that the entity paying for the testing is somehow responsible for the need for the testing.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

这一个时间,我们就是一个时间的一个时间,我们的时间的一个时间,我们的时间,我们的时间,我们的时间,我们的时间,我们的时间,我们的时间,我们的一个时间,这个时间,

[X]	4050 Main Street, Riverside, CA 92501
(')	4050 Main Street, Riverside, CA 92501 4175 Main Street, Riverside, CA 92501
1 1	880 N. State Street, Hemet, CA 92543
[]	41002 County Center Dr. #100, Temecula, CA 92591
[]	155 E. Hays Street, Banning, CA 92220
[]	505 S. Buena Vista Ave., Corona, Ca 91720
[]	30755-D Auld Rd., Ste 1226, Murrieta, CA 92563
[]	13800 Heacock #D201, Moreno Valley, CA 92553

CLERKS CERTIFICATE OF MAILING

PLAINTIFF:

EMHART INDUSTRIES INC

v.

CASE NO: RIC397528

DEFENDANT:

CALIFORNIA REGIONAL WATER QUALITY CONTROL

TO:

I, clerk of the above entitled court, do hereby certify I am not a party to the within action or proceeding; that on the date below indicated, I served a copy of the attached STATEMENT OF DECISION[by depositing said copy enclosed in a sealed envelope with postage thereon fully prepaid in the mail from the addressed attached hereto.

CLERK OF THE COURT

Dated:

11/08/04

MARCT MCOTTERN

Notice 'CCM1' has been printed for the following Attorneys/Firms or Parties for Case Number RIC397528 on 11/08/04:

CALLED THE RESIDENCE OF THE PROPERTY OF THE PR

ALLEN, MATKINS, LECK, GAMBLE, & MA ALLEN MATKINS LECK GAMBLE & MALLOR THREE EMBARCADERO CENTER 12TH FLOOR SAN FRANCISCO, CA 94111

LAW OFFICES OF SUSAN M TRAGER 19712 MACARTHUR BOULEVARD SUITE 120 IRVINE, CA 92612 ATTORNEY GENERAL OF THE STATE OF C 300 SOUTH SPRING STREET LOS ANGELES, CA 90013

EXHIBIT G



California Regional Water Quality Control Board

Santa Ana Region

Alan C. Lloyd, Ph.D.

Agency Secretary

3737 Main Street, Suite 500, Riverside, California 92501-3348 Phone (951) 782-4130 – FAX (951) 781-6288 – TTY (951) 782-3221 http://www.waterboards.ca.gov/santaana

Arnold Schwarzenegge Governor

July 5, 2005

Ms. Linda H. Biagioni, Vice President Emhart Industries, Inc. 701 East Joppa Road Towson, MD 21286

CT Corporation System 818 West Seventh Street Los Angeles, CA 90017

RE: Emhart Industries Inc. v. California Regional Water Quality Control Board, Santa Ana, et al., Riverside County Superior Court, Case No. 397528

Dear Ms. Biagioni:

In compliance with the Court's Peremptory Writ of Mandate in this matter, the Order issued on October 23, 2002 to Emhart Industries, Inc., under Section 13267 of the Water Code is hereby rescinded.

Sincerely,

Gerard J. Thibeault

Executive Officer

cc: Jorge A, Leon, SWRCB - OCC

Gary Tavetian, Attorney General's Office

James L. Meeder, Allen Matkins Leck Gamble & Mallory LLP

Francis D. Logan, Jr., Law Offices of Susan M. Trager